

DATED

DAY OF

BUILDING UPGRADE AGREEMENT

UNDER SCHEDULE 1B TO THE LOCAL GOVERNMENT ACT 1999

BETWEEN

[insert]

("Council")

-AND-

[insert]

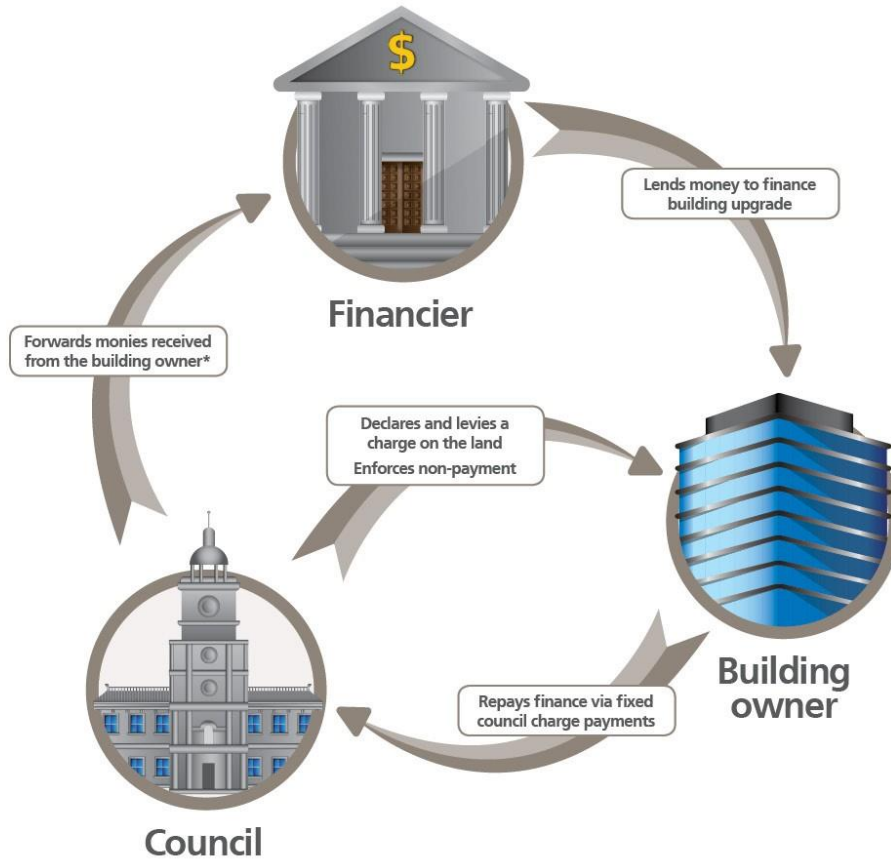
("Finance Provider")

-AND-

[insert]

("Building Owner")

Building Upgrade Finance



*May deduct administration fees.



Security – The building upgrade charge secures the loan. The charge ranks as a statutory charge in the event of liquidation or administration and ranks ahead of secured creditors. The Council is not financially liable for any non-payment by the building owner.



Repayments – Finance is typically ten years in tenure and the repayments are fixed.



Threshold test – The total amount of debt (e.g. taxes, rates, charges and mortgages owed) and the value of the building upgrade charge must not exceed 80% of the capital value of land prior to the upgrade.

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ANNEXURE 2 DIRECT DEBIT AUTHORITY

ANNEXURE 3 FIRST YEAR PERFORMANCE REPORT TEMPLATE - ENVIRONMENTAL UPGRADE WORKS

ANNEXURE 4 [*PARTIES CAN INSERT FURTHER AGREED ANNEXURES]

Dated _____ day of _____

PARTIES:

of (“Council”)

AND

of (“Finance Provider”)

AND

Of (“Building Owner”)

BACKGROUND:

- A. The Building Owner owns or is relevantly responsible for the land upon which the building is located (the Land) and wishes to carry out Upgrade Works to the building in accordance with Schedule 1B to the *Local Government Act 1999* (LGA) and the *Local Government (Building Upgrade Agreements) Regulations 2017* (Regulations).
- B. The Upgrade Works are either environmental upgrade works or prescribed upgrade works within the meaning of the LGA and the Regulations.
- C. The Finance Provider has agreed to advance money to the building owner for the purpose of financing the Upgrade Works (the Finance).
- D. The Council has agreed to declare and levy a charge on the Land pursuant to Schedule 1B of the LGA (Building Upgrade Charge), to be paid by the Building Owner, for the purpose of recouping the Finance provided by the Finance Provider (and any interest or other charges payable to the Finance Provider under this Agreement).
- E. The Council has agreed to pay to the Finance Provider money paid to the Council by the Building Owner by way of the Building Upgrade Charge, subject to the LGA and the Regulations and the deduction of certain administrative costs agreed under this Agreement and permitted under the LGA.

IT IS AGREED:**1. INTERPRETATION****1.1 Definitions**

In this Agreement—

Administrative Costs means as at a particular Charge Payment Date, any of the following to be paid as part of a Charge Payment to the Council by the Building Owner:

1.1.1 a Late Payment Fee; and

1.1.2 a Service Fee,

Agreed Repayment Arrangements means the details agreed between the parties in relation to the repayment of the Finance by the Building Owner, and includes the Charge Payment Dates, the Charge Payments, and the amount of, or method for calculating, the Administrative Costs, as set out in Schedule 4 and as amended from time to time in accordance with clause 10;

Building means the building to which the Upgrade Works relate and identified in Schedule 1;

Building Upgrade Charge means the amount agreed by the parties and specified in Schedule 4 (including any interest or other charges payable to the Finance Provider), to be declared and levied as a statutory charge on the Land by the Council, payable by the Building Owner to the Council for the purpose of recouping the Finance in accordance with this Agreement, the LGA and Regulations;

Business Day means any day that is not a Saturday, Sunday or a public holiday in South Australia;

Charge Payment means the amount of the Building Upgrade Charge payable by the Building Owner to the Council on a Charge Payment Date and any Administrative Costs that have been applied in respect of that Charge Payment Date, as set out in Schedule 4, and as amended or adjusted in accordance with clause 10;

Charge Payment Date means each date on which a Charge Payment is due from the Building Owner to the Council as set out in the Agreed Repayment Arrangements;

CLMA means the *Crown Land Management Act 2009*;

Commencement Date means the date specified in Schedule 1;

Enforcement Procedure means the Council's enforcement procedure in Annexure 1;

Execution Date means the date this Agreement is executed by all the parties;

Finance means the amount of money advanced to the Building Owner by the Finance Provider for the purpose of undertaking the Upgrade Works under this Agreement as set out in Schedule 3;

Land means the land on which the Building is situated and identified in Schedule 1;

Late Payment Fee means the administrative fee to be retained by the Council for late payment of a Charge Payment, as agreed and determined in accordance with Schedule 4;

LGA means the *Local Government Act 1999*;

Other Documents means any other document relating to the Finance between the Finance Provider and the Building Owner;

Outstanding Charge Amount means, as at any date, the sum of all Charge Payments payable by the Building Owner under this Agreement, less the total amount of Charge Payments that have already been paid by the Building Owner as at that date;

Outstanding Finance means, at a particular date, the Finance that has been advanced by the Finance Provider to the Building Owner under this Agreement, less the aggregate of all amounts received from the Building Owner and paid by the Council to the Finance Provider under this Agreement up to and including that date (excluding any Administrative Costs, Penalty Interest and any interest payable by the Council to the Finance Provider in accordance with clauses 8.5 and 9.5 respectively);

Party or Parties means a party or parties to this Agreement;

Penalty Interest means the interest (if any) payable by the Building Owner to the Council on the principal amount of the Finance under clause 8.5;

Prepayment means each payment from the Building Owner to the Council by way of prepayment of all or part of the Building Upgrade Charge in accordance with clauses 8.3 and 8.4;

Proceeds means any amount received or recovered by the Council as a result of the exercise of its powers of enforcement with respect to the obligation of the Building Owner to pay the Building Upgrade Charge and any Penalty Interest, including the proceeds of a sale of the Land in accordance with Schedule 1B of the LGA, but excluding any Administrative Costs;

Regulations means the *Local Government (Building Upgrade Agreements) Regulations 2017* (Regulations) made under the LGA;

Service Fee means the amount, or part of the amount for the costs incurred by the Council in entering into, and administering this Agreement as agreed and determined in accordance with Schedule 4;

Total Value of the Building Upgrade Charge means that amount determined in accordance with Schedule 4 to this Agreement;

Upgrade Works means, without derogating from the interpretation of upgrade works in the LGA, those works to be undertaken under this Agreement and described in Schedule 2;

1.2 In this Agreement, unless a contrary intention is evident:

1.2.1 A reference to this Agreement is a reference to this Agreement as amended, varied, novated or substituted from time to time;

1.2.2 A reference to any legislation or to any provision of any legislation includes:

(a) all legislation, regulations, proclamations, ordinances, by-laws and instruments issued under that legislation or provision; and

- (b) any modification, consolidation, amendment, re-enactment or substitution of that legislation or provision;
 - 1.2.3 A word importing:
 - (a) the singular includes the plural;
 - (b) the plural includes the singular; and
 - (c) a gender includes every other gender;
 - 1.2.4 Words denoting individuals include corporations, unincorporated associations, partnerships, trusts and joint ventures;
 - 1.2.5 A reference to a party includes that party's administrators, successors and permitted assigns;
 - 1.2.6 If any act pursuant to this Agreement would otherwise be required to be done on a day which is not a Business Day then that act may be done on the next Business Day;
 - 1.2.7 Where a word or phrase is given a defined meaning, any other part of speech or grammatical form in respect of that word or phrase has a corresponding meaning;
 - 1.2.8 A reference to two or more persons is a reference to those persons jointly and severally;
 - 1.2.9 A reference to a clause or schedule is a reference to a clause of, or a schedule to, this Agreement;
 - 1.2.10 A reference to a clause number includes a reference to all of its subclauses;
 - 1.2.11 A reference to dollars is to Australian dollars;
 - 1.2.12 Where general words are associated with specific words which define a class, the general words are not limited by reference to that class;
 - 1.2.13 The clause headings are for convenience only and they do not form part of this Agreement; and
 - 1.2.14 The word "or" is not exclusive.
- 1.3 This Agreement comprises:
- 1.3.1 this Agreement;
 - 1.3.2 the schedules to this Agreement;
 - 1.3.3 the annexures to this Agreement;
- and in resolving inconsistencies, the order of priority of application is:
- (a) LGA;
 - (b) Regulations;
 - (c) clauses 12, 13 and 14 of this Agreement;
 - (d) this Agreement (excluding clauses 13, 14 and 15 the Schedules and Annexures)
 - (e) the Schedules;
 - (f) the Annexures; and
 - (g) the Other Documents.

2. **BUILDING UPGRADE AGREEMENT**

The parties acknowledge and agree that this is a Building Upgrade Agreement for the purposes of implementing the Upgrade Works in accordance with Schedule 1B of the LGA and the Regulations, and that to the extent that any of the Council, the Building Owner or the Finance Provider are required to ensure that certain matters are satisfied or obligations have been met prior to the relevant party entering into this Agreement, then by entering into this Agreement the relevant party is taken by the other parties to have warranted that the relevant matter has been satisfied or obligation has been met.

3. **TERM**

This Agreement commences on the Commencement Date and expires when the Building Owner has discharged its obligation to pay the Building Upgrade Charge under this Agreement and the Council has discharged its obligations to the Finance Provider under clause 9.2 and 9.4.

4. **ADVANCE OF FINANCE**

4.1 Subject to this Agreement, the Finance Provider agrees to advance the Building Owner the Finance as set out in Schedule 3 and the Other Documents.

4.2 The Building Owner must use the Finance only for the Upgrade Works set out in Schedule 2.

5. **UPGRADE WORKS**

5.1 The Building Owner must cause the Upgrade Works described in Schedule 2 to be undertaken in accordance with this Agreement.

5.2 The Building Owner must ensure that the Upgrade Works are undertaken by competent and appropriately qualified persons and in full compliance with all applicable occupational, health, welfare and safety standards including without limitation the *Work Health and Safety Act 2012 (SA)* and *Work Health and Safety Regulations 2012 (SA)*.

6. **DECLARATION AND LEVY OF BUILDING UPGRADE CHARGE**

6.1 The parties acknowledge that the Building Upgrade Charge is specified in Schedule 4.

6.2 On or before the Commencement Date the Council must declare the Building Upgrade Charge in respect of the Land.

- 6.3 Within the time specified in Schedule 1B of the LGA¹, the Council must provide to the Building Owner a notice that complies with the requirements of Schedule 1B of the LGA and provide that same notice to the Finance Provider.
- 6.4 Within two Business Days of the Council declaring the Building Upgrade Charge in accordance with clause 6.2, the Council must provide to each of the Building Owner and the Finance Provider a notice that the Building Upgrade Charge has been declared.

7. **REGISTER OF BUILDING UPGRADE AGREEMENTS**

The parties acknowledge that the Council has obligations under Schedule 1B of the LGA and the Regulations to keep and maintain a register of building upgrade agreements including this Agreement, including the prescribed information under the Regulations, and must record entry of this Agreement on the register within 5 Business Days of execution of this Agreement.

8. **BUILDING UPGRADE CHARGE PAYMENTS**

Building Owner to make Charge Payments and pay Penalty Interest

- 8.1 The Council must in accordance with Schedule 1B of the LGA send a notice to the Building Owner specifying the Charge Payment and any Penalty Interest amount to be paid, not later than twenty-eight (28) days prior to the date on which the relevant Charge Payment and any Penalty Interest is required to be made in accordance with the Agreed Repayment Arrangements.
- 8.2 The Building Owner must pay each Charge Payment and any Penalty Interest to the Council by direct debit on or before the relevant Charge Payment Date in accordance with the Agreed Repayment Arrangements until such time as the Building Upgrade Charge has been fully paid by the Building Owner.

Prepayment

- 8.3 The Building Owner may prepay all or any part of the Outstanding Charge Amount (excluding any relevant Administrative Costs that have not yet been applied) ("**Prepayment**") by giving not less than twenty-eight (28) days prior written notice to the Council and the Finance Provider specifying the amount and the Charge Payment Date on which the Prepayment will be paid, provided that any Prepayment is not less than a Charge Payment.
- 8.4 On the proposed Charge Payment Date, the Building Owner must pay the Prepayment specified in the notice of prepayment given under clause 8.3.

Penalty Interest

- 8.5 If Schedule 3 provides that the Building Owner is liable to pay Penalty Interest, then if a Charge Payment or any part of it has not been received by the Charge Payment Date, the Building Owner must pay Penalty Interest on the principal amount of the Finance, as specified in Schedule 3.

¹ At the time of this Agreement is twenty-eight (28) days from the Council declaring the Building Upgrade Charge.

Direct Debit Authority by the Building Owner

- 8.6 For the purpose of paying the Charge Payment and any Penalty Interest, the Building Owner must provide to the Council a completed and signed copy of the direct debit authority included as Annexure 2.

When Agreed Repayment Arrangements Cease to Apply

- 8.7 The Agreed Repayment Arrangements cease to apply when the obligation to make Charge Payments and any Penalty Interest has been fully discharged by the Building Owner in accordance with the LGA, the Regulations and this Agreement.

If Charge Payment Not Paid in Full

- 8.8 If any portion of a Charge Payment amount or any Penalty Interest has not been paid by the Building Owner by the relevant Charge Payment Date (**Shortfall**), the Building Owner will remain liable to pay the Shortfall and the Council will include details of the Shortfall in the next notice to the Building Owner specifying the Charge Payment amount to be paid and the Shortfall amount, in accordance with clause 8.1.

9. COUNCIL TO RECOVER CHARGE AND PAY TO FINANCE PROVIDER**Council to Use Best Endeavours to Collect Building Upgrade Charge**

- 9.1 The Council must use its best endeavours to recover the Building Upgrade Charge in accordance with the terms of this Agreement.

Administrative Costs

- 9.2 The Council may retain an amount equal to any Administrative Costs that have been applied in respect of a Charge Payment made by the Building Owner under clause 8.2.

Council to Remit Monies to Finance Provider

- 9.3 Subject to clause 9.4, the Council must, in accordance with this Agreement and with the LGA and Regulations, distribute each amount it receives or recovers from the Building Owner (other than the amount for Administrative Costs referred to in clause 9.2) whether as a result of the exercise of its powers of enforcement or otherwise as:

- 9.3.1 a Charge Payment;
- 9.3.2 a Prepayment;
- 9.3.3 a Penalty Interest payment; or
- 9.3.4 Proceeds,

to the Finance Provider by way of electronic funds transfer into the nominated bank account specified in the Finance Provide Remittance Details set out in Schedule 5 no later than ten (10) Business Days after the Council has received or recovered funds from the Building Owner for that amount.

- 9.4 Clause 9.3 in no way detracts from the obligation of the Council to comply with Schedule 1B of the LGA in relation to the application of the proceeds of the sale of the land for non-payment of the Building Upgrade Charge under Schedule 1B of the LGA and the Regulations.

- 9.5 Subject to clause 9.2, if any part of a Charge Payment is paid by the Building Owner to the Council and the Council makes any payment to the Finance Provider later than on the Business Day on which it is required to make that payment under this Agreement, it will pay the Finance Provider interest on that amount, calculated daily at a rate equal to the Reserve Bank of Australia's overnight cash rate for each day the payment is outstanding.

10. **AMENDMENTS TO AGREED REPAYMENT ARRANGEMENTS AND REFUNDS**

Change in Amounts Payable by Building Owner

- 10.1 Subject to clause 10.3, the Agreed Repayment Arrangements must be amended if any of the following events (**Adjustment Event**) occurs:
- 10.1.1 a Prepayment from the Building Owner to the Council;
 - 10.1.2 the receipt or recovery of Proceeds by the Council; or
 - 10.1.3 the termination of this Agreement before the Building Owner receives all of the Finance payable by the Finance Provider to the Building Owner under this Agreement.
- 10.2 In the event an Adjustment Event occurs, the Finance Provider agrees to:
- 10.2.1 amend the Agreed Repayment Arrangements so that the total amount of the Outstanding Charge Amount (and any Penalty Interest) is equal to the sum of the Outstanding Finance and the Administrative Costs and Penalty Interest outstanding as at the date of the relevant Adjustment Event; and
 - 10.2.2 provide the Building Owner and the Council with the amended Agreed Repayment Arrangements within five (5) Business Days of the Adjustment Event.
- 10.3 If the effect of the amendment is to reduce the amount outstanding to zero, no amendment is required.

Refund of Overpayments

- 10.4 If the Building Owner has made any payments in excess of the Charge Payment (as amended in accordance with clause 19 or adjusted in accordance with clause 10.2), then the Council must refund the excess amount to the Building Owner within twenty (20) Business Days of becoming aware of the overpayment and (if applicable) receiving remittance of the overpayment from the Finance Provider.
- 10.5 The Finance Provider must remit any overpayment received to the Council within ten (10) Business Days of being notified by the Council of the overpayment.

Interest Rate Change

- 10.6 At any time between the Execution Date and the Commencement Date (both inclusive), the Finance Provider may provide to the Council and the Building Owner an amended Schedule 3 - Finance Schedule to reflect any change in interest rates that affects the Finance Provider's own cost of funds in respect of compliance with its obligations under this agreement. The Finance Provider's own cost of funds will be determined in good faith by the Finance Provider. That amended Finance Schedule will, on and from the date on which

it is provided to the Council and the Building Owner, be the Finance Schedule for the purpose of this Agreement.

- 10.7 Not later than one (1) Business Day after the Finance Provider provides an amended Schedule 3 - Finance Schedule to the Council and the Building Owner in accordance with clause 10.6, the Finance Provider must amend Schedule 4 - Agreed Repayment Arrangements to reflect the amended Finance Schedule and provide a copy of the amended Schedule 4 - Agreed Repayment Arrangements to the Council and the Building Owner. The amended Schedule 4 - Agreed Repayment Arrangements will become effective and binding on all the parties on the date provided to the Council and the Building Owner.

11. **COUNCIL NOT LIABLE FOR FAILURE TO RECEIVE OR RECOVER FROM BUILDING OWNER**

11.1 The Council is not liable:

11.1.1 for failure to receive or recover Charge Payments or Penalty Interest from the Building owner and any such failure does not make the Council liable to pay any outstanding amount to the Finance Provider;

11.1.2 for any failure by the Building Owner to comply with its obligations under this Agreement to make the Charge Payments or make Penalty Interest payments and any such failure does not make the Council liable to pay any outstanding amount to the Finance Provider;

11.1.3 to repay to the Finance Provider the Finance (or any part thereof) advanced by the Finance Provider to the Building Owner under this Agreement unless and until the Finance (or part thereof) has been received by the Council by way of paid Charge Payments and any Penalty Interest payments have been received; or

11.1.4 to the Finance Provider for (and has no obligations in respect of) any Outstanding Finance.

12. **MANDATORY REQUIREMENTS FOR THE PURPOSES OF THE LGA AND REGULATIONS**

The parties acknowledge that the Minister has designated for the purposes of clause 5(1)(f) of Schedule 1B of the LGA, the matters set out in regulation 6 of the Regulations and clauses 13 and 14 of this Agreement as mandatory requirements.

13. **MANDATORY REQUIREMENT - BUILDING OWNER REPORTING²**

13.1 To the extent that this Agreement applies to environmental upgrade works, for the purposes of and in accordance with Regulation 6(1)(a) of the Regulations,

² Mandatory requirements for the purposes of the LGA and Regulations.

the Building owner must within the time specified in the Regulations³, using the relevant form set out in Annexure 3, report to the other parties to this Agreement:

- 13.1.1 that the Upgrade Works have been completed to the specifications set out in this Agreement; and
 - 13.1.2 set out any variations from or defects (except for minor defects described in 13.3 below) associated with the Upgrade Works as specified in this Agreement; and
 - 13.1.3 any other information as specified in Annexure 3.
- 13.2 The parties acknowledge that the Minister has designated the National Australian Built Environment Rating System (NABERS) as the accredited rating system specified in Regulation 6(1) of the Regulations for the purposes of this clause 13.
- 13.3 For this purposes of this clause 13, **practical completion** means a stage in the carrying out and completion of the Upgrade Works when:
- 13.3.1 the Upgrade Works are complete except for minor defects:
 - (a) which do not prevent the Upgrade Works from being reasonably capable of being used for their stated purpose;
 - (b) which a suitably qualified expert determines the contractor performing the Upgrade Works has reasonable grounds for not promptly rectifying; and
 - (c) where the rectification of which will not prejudice the convenient use of the Upgrade Works;
 - 13.3.2 those tests which are required to be carried out and passed by the contractor performing the Upgrade Works have been carried out and passed before the Upgrade Works reach practical completion; and
 - 13.3.3 documents and other information required under the contract for Upgrade Works which, in the suitable expert's opinion, are essential for the use, operation and maintenance of the Upgrade Works have been supplied.
- 13.4 For the avoidance of doubt, if the Upgrade Works consist of a number of components, for the purpose of reporting under this clause 13, the Upgrade Works are considered to be completed only when the full scope of works as specified in this Agreement has reached practical completion.

14. **MANDATORY REQUIREMENT - DISCLOSURE AND USE OF INFORMATION**⁴

- 14.1 The Building Owner acknowledges and agrees that the information and material contained in and related to this Agreement as well as the information and material reported under clause 13 of this Agreement:

³ At the time of this Agreement is within 15 months after practical completion of the environmental upgrade works.

⁴ Mandatory requirements for the purposes of the LGA and Regulations.

- 14.1.1 may be reported by the Council to the Minister under Schedule 1B of the LGA and the Regulations or otherwise; and
- 14.1.2 may be used and disclosed by the Council:
 - (a) for the purpose of council analysis, auditing and reporting;
 - (b) where required by law or order of court;
 - (c) where required by convention; or
 - (d) with the consent of the Building Owner and the Finance Provider, for any other purpose.

15. **ENFORCEMENT**

Council to give notice to Finance Provider

- 15.1 The Council must, as soon as reasonably practicable, give notice in writing to the Finance Provider if the Council becomes aware of a failure by the Building Owner to pay by the due date any amount payable under the Agreed Repayment Arrangements.

Council's Enforcement Procedure

- 15.2 The Council and the Finance Provider each agree to be bound by the Enforcement Procedure in Annexure 1. The parties agree that the Council will only vary the Enforcement Procedure if:
 - 15.2.1 the Enforcement Procedure is or becomes inconsistent with applicable laws or there is a change in laws, in which case the Council will provide written notice to the Finance Provider of the variation necessary; or
 - 15.2.2 it obtains the prior written consent of the Finance Provider and the Building Owner (which consent may be withheld in the relevant party's absolute discretion).

Sale of Land by Council

- 15.3 The Council will give written notice to the Finance Provider in the event it intends to use its power of sale under clause 9, Schedule 1B of the LGA.
- 15.4 If the Council sells the Land in accordance with Schedule 1B of the LGA and the Regulations:
 - 15.4.1 the Building Upgrade Charge will cease to be a charge on the Land as from settlement of the sale of the Land under the Council's power of sale;
 - 15.4.2 following the application of Proceeds of that sale in accordance with Schedule 1B of the LGA, the Regulations and this Agreement, if the Building Upgrade Charge and Penalty Interest are not fully discharged (despite the Building Upgrade Charge no longer being a charge on the Land), while the Council will no longer have any further obligations under this Agreement, the Building Owner remains liable to pay the outstanding amount to the Finance Provider;
 - 15.4.3 Notwithstanding the rest of this clause 15.4, the Council is not obliged to take any action against the Building Owner personally to recover

any outstanding amount of the Building Upgrade Charge or Penalty Interest which remains unpaid; and

- 15.4.4 The parties acknowledge that this clause has no application if the land the Building is located on is subject to the CLMA.

Council's discretion regarding Enforcement

15.5 The parties agree that the Council:

15.5.1 may only waive or defer the enforcement of any unpaid Charge Payment amount if the waiver or deferral is:

- (a) in accordance with the process contained in the Enforcement Procedure; and
- (b) in accordance with the LGA and any applicable regulations; and
- (c) agreed in writing by the Finance Provider.

15.5.2 must notify the Finance Provider of any waiver or deferral of the enforcement of any unpaid Charge Payment it proposes to grant as contemplated under clause 15.5.1.

15.5.3 If the Council waives or defers the enforcement of any unpaid Charge Payment in accordance with clause 15.5.1, the Council is not liable to the Finance Provider for the Charge Payment which has been waived or deferred, unless that amount is actually received by the Council.

16. BUILDING OWNER ACKNOWLEDGMENT REGARDING LESSEE CONTRIBUTION

16.1 To the extent that the Building Owner has, under a lease over the Land or part of the Land, sought or is seeking recovery from the lessee a contribution to the Building Upgrade Charge payable by the Building Owner under this Agreement, the Building Owner acknowledges and agrees that:

- 16.1.1 it must comply with the LGA and Regulations in relation to the recovery of that contribution; and
- 16.1.2 the arrangement with or conduct of the lessee in no way affects the Building Owner's obligations under this Agreement, including the obligation to pay the Building Upgrade Charge.

17. ASSIGNMENT

Assignment by Council

17.1 The Council may only assign its rights or obligations under this Agreement if the Council amalgamates, merges or becomes subject to any similar arrangement with another council (as defined in the LGA).

17.2 An assignment under clause 17.1 does not require the consent of the Building Owner or the Finance Provider.

Assignment by Finance Provider

17.3 The Finance Provider must not assign, novate its obligations or otherwise deal with its rights or obligations, under this Agreement or allow any interest in them to arise or be varied, in each case, without the prior written consent of

the Council and the Building Owner (such consent not to be unreasonably withheld or delayed).

Assignment by Building Owner

17.4 Subject to clause 18, the Building Owner must not assign, novate its obligations or otherwise deal with its rights or obligations, under this Agreement or allow any interest in them to arise or be varied, in each case, without the prior written consent of the Finance Provider and the Council (such consent not to be unreasonably withheld or delayed).

Accession Deed Poll

17.5 If an assignment and novation contemplated by this clause 17 involves the transfer of all of the rights and novation of all the obligations of a party under this Agreement, the transferee must enter into and provide to each other party, a deed in the form of Schedule 6 under which the transferee agrees to be bound, with effect on and from the date of the deed, by the terms of this Agreement as if it was originally named as a party to this Agreement instead of the applicable party.

Release

17.6 On the date on which an executed deed under clause 17.5 is delivered to each other party to this Agreement, the relevant transferor is released from all of its future obligations under this Agreement.

18. SALE OF LAND, SUBDIVISION AND CHANGE OF USE

Sale of Land

18.1 Subject to clause 18.4, the Building Owner must notify the Council and the Finance Provider within two (2) Business Days of entering into a contract for the sale of the Land.

18.2 The Building Owner must provide the Finance Provider with the details of the prospective purchaser of the Land and provide all reasonable assistance to enable the Finance Provider to undertake to its satisfaction any, know your client / anti money laundering checks on the prospective purchaser that the Finance Provider is required to make in respect of the prospective purchaser, prior to the settlement of the sale of the Land and the assignment of this Agreement. For the avoidance of doubt, if a prospective purchaser fails to satisfy the Finance Provider's know your client / anti money laundering checks, clause 18.3.1 will apply.

18.3 On or before the date of completion of the contract of sale, the Building Owner must either:

18.3.1 repay the Outstanding Charge Amount and any Penalty Interest in full to the Council in accordance with a notice that the Council will issue;
or

18.3.2 procure the execution of a deed in the form set out at Schedule 6 to this Agreement.

Subdivision

18.4 The Building Owner must not lodge a plan of subdivision for approval at the Lands Titles Office or the Development Assessment Commission in respect of the Land unless:

- 18.4.1 the Building Owner has received written confirmation from the Council that the Council is satisfied the proposed subdivision will have no impact on the eligibility conditions set out in clause 2 of this Agreement; and
- 18.4.2 the Building Owner has obtained the prior written consent of both the Finance Provider and the Council (with any such consent not to be unreasonably withheld or delayed); or
- 18.4.3 its obligation to make Charge Payments and pay Penalty Interest (if any) under this Agreement have been fully discharged.

Community Subdivision

- 18.5 The Building Owner must fully discharge the Building Upgrade Charge before lodging a plan of community division for registration in respect of any part of the building.

Change of Use

- 18.6 Subject to receiving the written consent of both the Finance Provider and the Council (such consent not to be unreasonably withheld or delayed), the Building Owner must not lodge an application for development approval for change in the use of the Land under the *Development Act 1993* (or the equivalent in any superseding legislation) unless:
 - 18.6.1 the Building Owner has received written confirmation from the Council that the Council is satisfied the proposed development will have no impact on the eligibility criteria set out in Schedule 1B of the LGA and the Regulations; and
 - 18.6.2 the Building Owner has obtained the prior written consent of both the Finance Provider and the Council (with any such consent not to be unreasonably withheld or delayed); or
 - 18.6.3 its obligation to make Charge Payments and to pay any Penalty Interest under this Agreement have been fully discharged.

19. **VARIATION OF AGREEMENT**

This Agreement may only be varied by written agreement of the parties and in full compliance with the requirements of the LGA and the Regulations.

20. **TERMINATION**

Termination for convenience

- 20.1 At any time, this Agreement may be terminated in writing signed by each of the parties.

Termination for default

- 20.2 If the Building Owner uses the Finance provided to it on the terms set out in Schedule 3 for any purpose other than for the purpose of paying the costs associated with the Upgrade Works under the terms of this Agreement or otherwise fails to carry out the Upgrade Works, the Council will, upon receipt of evidence of the default, provide written notice to the Finance Provider.

20.3 The Finance Provider may, upon receiving written notice from the Council in accordance with clause 20.2, in its complete discretion, direct the Council to terminate this Agreement.

20.4 The Council must give the Building Owner at least one (1) month's notice in writing prior to the termination of this Agreement.

Termination for provision of false information by Building Owner

20.5 The Council may terminate this Agreement if the Council determines that the Building Owner has breached its warranty under clause 2.

Consequences of termination

20.6 If this Agreement is terminated under clauses 20.1 to 20.5, the Building Owner must, on or prior to the date the termination takes effect:

20.6.1 make a Prepayment of the Outstanding Charge Amount in accordance with clause 8.3; and

20.6.2 pay any break costs properly incurred by the Finance Provider in connection with the early repayment of the Finance.

21. **COSTS**

21.1 The Building Owner must immediately pay on demand all reasonable costs and expenses of the Council and the Finance Provider in connection with:

- (a) the negotiation, preparation, execution, delivery, registration or completion of this Agreement;
- (b) any variation or discharge of this Agreement;
- (c) the giving by the Council or the Finance Provider of a consent or approval in connection with this Agreement; and
- (d) obtaining advice from a professional person or consultant about any matter of concern to it in connection with this Agreement;

in each case including any legal costs and expenses (on a full indemnity basis) and any professional consultant's fees.

21.2 The Building Owner must pay, or immediately on demand reimburse the Council and the Finance Provider for, all taxes which may be payable or determined to be payable by the Building Owner, the Council or the Finance Provider (as applicable) in connection with this Agreement or a payment, receipt or other transaction contemplated by this Agreement.

22. **COMPLY WITH LAWS**

All parties must comply with the laws in force in South Australia in the course of performing this Agreement.

23. **COUNTERPARTS**

This Agreement may be executed in any number of counterparts each of which is taken to be an original. All of those counterparts taken together constitute one (1) instrument. An executed counterpart may be delivered by email.

24. **SURVIVAL**

All clauses that by necessary implication should survive, survive any expiry or termination of this Agreement.

25. **PROPER LAW**

The laws in force in South Australia, including laws with respect to capacity to contract and the manner of performance, apply to this Agreement.

26. **JURISDICTION OF COURTS**

26.1 The courts of South Australia and the Federal Court of Australia have exclusive jurisdiction to determine any proceedings in relation to this Agreement.

26.2 Any proceedings brought in a Federal Court must be instituted in the Adelaide Registry of that Federal Court.

26.3 The supplier undertakes not to apply to transfer any proceedings to another registry of the Federal Court.

27. **NOTICES**

27.1 A “notice” means:

27.1.1 a notice; or

27.1.2 a consent, approval or other communication required to be in writing under this Agreement.

27.2 A notice or other communication is properly given or served if the Party delivers it by hand, posts it or transmits it by electronic mail to the other Party to the address specified in Schedule 1.

27.3 A notice or other communication is taken to be received if:

27.3.1 delivered by hand before 5.00 pm on a Business Day, on the day of delivery, otherwise on the next Business Day;

27.3.2 sent by pre-paid mail, on the sixth Business Day after posting;

27.3.3 transmitted by electronic mail:

(a) when the relevant email appears in the sender’s sent log with properties disclosing an appropriate routing; and

(b) the sender does not receive a message from the system operator to the effect that the relevant email was undeliverable.

- 27.4 If the result under clause 27.3 is that a notice would be taken to be given on a day that is not a Business Day in the place to which the notice is sent, then it will be taken to have been given on the next Business Day in that place.
- 27.5 A party may from time to time notify of a change to its contact details by written notice to the other party.

28. **ADDITIONAL CONDITIONS**

- 28.1 The parties agree that:
- 28.1.1 the Additional Conditions contained within Schedule 7 - Additional Conditions to this Agreement are binding upon each of the parties; and
- 28.1.2 to the extent of any inconsistency between this Agreement and the Additional Conditions contained in Schedule 7, this Agreement shall prevail.

EXECUTED AS AN AGREEMENT

*If a Party is a **company**, use any of the following three execution blocks - delete inapplicable:*

EXECUTED by **THE PARTY NAMED IN ITEM**)
[x] OF SCHEDULE 1 in accordance with section)
127 of the *Corporations Act 2001* (Cth) by two)
directors or by one director and the company)
secretary:

.....)
Director signature Director/Company Secretary signature

.....)
Director name Director/Company Secretary name

THE COMMON SEAL of **THE PARTY NAMED**)
IN ITEM [x] OF SCHEDULE 1 was hereunto)
affixed in the presence of:)

.....)
Witness signature

.....)
Witness name

EXECUTED by **THE PARTY NAMED IN ITEM**)
[X] OF SCHEDULE 1 by a duly authorised)
officer in accordance with section 126 of the)
Corporations Act 2001 (Cth):)

.....)
Authorised officer signature

.....)
Authorised officer name

If a Party is a sole director company use the following execution block- delete inapplicable:

EXECUTED by **THE PARTY NAMED IN ITEM [X]**)
OF SCHEDULE 1 in accordance with section 127)
of the *Corporations Act 2001* (Cth):)

.....
Director and Sole Company Secretary signature

.....
Director and Sole Company Secretary name

If the Party is a natural person or sole trader use the following execution block- delete inapplicable

EXECUTED by **THE PARTY NAMED IN ITEM**)
[X] OF SCHEDULE 1 in the presence of:)

.....
Witness signature

.....
Party signature

.....
Witness name

.....
Party name

If the Party is a partnership use the following execution block - delete inapplicable:

EXECUTED by a partner in the partnership)
trading as **THE PARTY NAMED IN ITEM [X] OF**)
SCHEDULE 1 in the presence of:)
)

.....
Witness signature

.....
Partner signature

.....
Witness name

.....
Partner name

If the Party is a trustee use the following execution block - delete inapplicable:

EXECUTED by **THE PARTY NAMED IN ITEM [x]**)
OF SCHEDULE 1 as trustee of the trust named in)
Item 2 of Attachment 1 by a duly authorised)
officer in accordance with section 126 of the)
Corporations Act 2001 (Cth):)

.....
Authorised officer

.....
Authorised officer name

SCHEDULE 1**DETAILS**

| No. | Item | Details |
|-----|-------------------|--|
| 1 | Council | Name Address Phone Email Authorised Representative Contact Person |
| 2 | Building Owner | Name Address Phone Email Authorised Representative Contact Person |
| 3 | Finance Provider | Name Address Phone Email Authorised Representative Contact Person |
| 4 | Building | <i>[address and local government area]</i> |
| 5 | Land | <i>[Land on which Building is located - title details etc.]</i> |
| 6 | Commencement Date | The date of the first drawdown as listed in Schedule 3 |
| 7 | Finance amount | The amount set out in Schedule 3. |
| 8 | Finance term | The term set out in Schedule 3. |
| 9 | Upgrade Works | The works described in Schedule 2. |

SCHEDULE 2

UPGRADE WORKS AND BUDGET

[Drafting Note: the following table outlines the minimum information to be provided by the Building Owner and their representative. This table has been provided as a guide only. Additional information or alternative formats may be submitted, or requested by other parties.]

Example:

| Upgrade Works | Schedule of Items / Equipment | Budget | Environmental Benefit (if applicable) |
|----------------------|--------------------------------------|---------------|--|
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |

SCHEDULE 3**FINANCE**

[Drafting Note: The following table outlines minimum information to be provided by the Finance Provider to the Building Owner. The table has been provided as a guide only and is intended to summarise the terms of the agreement between the Finance Provider and the Building Owner.]

Example:

Finance Amount Terms

| | |
|------------------------------------|---|
| Finance Provider Interest Rate | |
| Finance Term (years) | |
| Finance Provider Establishment Fee | |
| Penalty Interest | [insert penalty interest rate or a methodology for calculating the rate/monthly basis]* <i>*The Council may request the Financier to provide the penalty interest calculation / amount to the Council.</i> |

Finance Amount to be advanced by Finance Provider to Building Owner

| Drawdown Date | Drawdown (Value \$) |
|----------------------|----------------------------|
| | |
| | |
| Total | [insert total] |

SCHEDULE 4**AGREED REPAYMENT ARRANGEMENTS**

[Drafting Note: the following table outlines minimum information to be provided by the Finance Provider and Council. The table has been provided as a guide only. Additional information or alternative formats may be submitted, or requested by other parties. Please add or delete rows as relevant to the loan terms.]

Example:

| Repayments from Building Owner | | | | |
|---------------------------------------|---------------------|--|---|--|
| Payment Period | Charge Payment Date | Charge Payment amount (excluding Council administrative costs) | Finance Provider service charges | Total Charge Payment (excluding Council administrative costs) |
| | | | <i>[insert one-off charge or insert recurring service charge for each Charge Payment]</i> | <i>[insert sum]</i> |
| | | | | |
| | | | | |
| Building Upgrade Charge | | | | <i>[insert total sum of all Charge Payments excluding Administrative Costs]</i> |

Administrative Costs

Service Fee
(as applicable)

Late Payment Fee
(as applicable)

SCHEDULE 5**FINANCE PROVIDER REMITTANCE DETAILS**

[Drafting Note: Finance Provider to insert bank details for remittance. The table below is a guide only and may be varied by the parties]

Example:

| | |
|------------------------------------|-------|
| Loan Reference | |
| Financial Institution | |
| Account Name | |
| BSB | |
| Account Number | |
| Email for remittance advice | |
| Fax for remittance advice | |
| Contact Name | |
| Contact Number | |
| Signed by Finance Provider: | Date: |

SCHEDULE 6

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 Building Upgrade Agreement,
as defined below (Beneficiary)

1. Definitions and interpretation

- (a) Building Upgrade Agreement means the agreement entitled "Building Upgrade Agreement (SA)" dated on or about [] between the Council, [] and [].
- (b) Unless otherwise defined, expressions used in this deed poll have the meanings given to them in the Building Upgrade Agreement.
- (c) Schedule 1 of the Building 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:
- (c)
 - (i). become, with effect on and from the date of this deed poll, [the Council /the Building Owner/the Finance Provider] under the Building Upgrade Agreement;
 - (ii). be bound by the Building Upgrade Agreement in that capacity with effect on and from the date of this deed poll; and
 - (iii). comply with and perform its obligations as [the Council /the Building Owner/the Finance Provider] under the Building Upgrade Agreement.

3. Governing law

This deed poll is governed by the law applying in South Australia.

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.

5. Attorneys

Each person who executes this deed poll on behalf of the Transferee 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 deed poll under that power.

Executed as a deed poll.

[Insert signing panel]

SCHEDULE 7

ADDITIONAL CONDITIONS

E.g. Limitation of Liability

ANNEXURE 1

COUNCIL ENFORCEMENT PROCEDURE

[Council to annex enforcement procedure*]

ANNEXURE 2

DIRECT DEBIT AUTHORITY

[Council to annex direct debit authority form*]

ANNEXURE 3**FIRST YEAR PERFORMANCE REPORT TEMPLATE - ENVIRONMENTAL UPGRADE****WORKS****Reporting Year:****Section 1: Building Details**

| | |
|--|--------------|
| Street Number: | Street Name: |
| Suburb: | Postcode: |
| Council LGA: | |
| Primary Building Use (please circle): Office Retail Industrial Accommodation Other (please specify) | |

Section 2: Owner Details

| | |
|----------|-----------------|
| Name: | Contact Number: |
| Address: | |
| Email: | |

Section 3: Completion

Environmental Upgrade Works Completion Date _____

Have Environmental Upgrade Works been completed to the specifications set out in this Agreement? _____

Provide details of any variations:

Section 4: Environmental Upgrade Works Performance

In relation to environmental upgrade works, the Building Owner is required, fifteen (15) months after the completion of Upgrade Works, to report to the parties of the Agreement on the environmental performance of the Building in the first twelve (12) months after the Upgrade Works have been completed, compared with the performance before the Upgrade Works (refer to the LGA and the Regulations for specific requirements).

Please report energy savings in kWh or Megajoules AND tonnes of CO₂-e, water savings in kL, waste or material savings in tonnes or m³ for each type of waste or material, transport savings in tonnes of CO₂-e, pollution savings in ppm or mg/m³, and monitoring or other savings in tonnes of CO₂-e, if relevant.

If Upgrade Works undertaken had more than one environmental benefit, please duplicate the following table for each type of environmental benefit.

| | |
|--|-------------------------------------|
| Environmental Benefit: | |
| Description of Environmental Upgrade Works: | |
| Date Commenced: | Cost Incurred: |
| Date Completed: | |
| Estimated anticipated cost savings*: *Anticipated savings which are based on estimates in Schedule 2 – Upgrade Works and Budget. | Actual Cost Savings: |
| Estimated anticipated environmental Savings**: **Anticipated savings are based on estimates in Schedule 2 – Upgrade Works and Budget. | Actual Environmental Savings: |

Section 5: NABERS Details

Post-upgrade Upgrade Works, has the Building achieved a NABERS accredited rating?

Yes No (please circle)

If yes, please circle the relevant NABERS categories and note the number of stars achieved for that category:

| Category | Type | Star Rating |
|-----------------------------------|----------------------------------|--------------------|
| Energy (without GreenPower) | Base Tenant Whole building | |
| Energy (with GreenPower) Water | Base Tenant Whole building | |
| Waste | Base Tenant Whole building | |
| Indoor Environment | Base Tenant Whole building | |

Signed by Owner:

Date:

ANNEXURE 4

[*PARTIES CAN INSERT FURTHER AGREED ANNEXURES,

**Example might include applicable Energy Performance Contracts relating to the
Upgrade Works*]**