

Schedule

MORLEY SHOPPING CENTRE REDEVELOPMENT AGREEMENT

THIS AGREEMENT is made the 19th day of November 1992

BETWEEN

THE STATE OF WESTERN AUSTRALIA (“the State”) and **MORLEY SHOPPING CENTRE PTY LIMITED** (A.C.N. 002 154 458) of 800 Toorak Road, Tooronga, Melbourne, Victoria (“MSC”) and **THE COLONIAL MUTUAL LIFE ASSURANCE SOCIETY LIMITED** (A.C.N. 004 405 556) of 330 Collins Street, Melbourne, Victoria (“CML”).

RECITALS

- A. MSC and CML in joint venture propose to undertake the Morley Redevelopment.
- B. The State for the purpose of promoting employment opportunity and development in Western Australia has agreed to assist, and at the request of the City to facilitate the City to assist, the Morley Redevelopment as set out in this Agreement.

OPERATIVE PART WHEREBY THE PARTIES AGREE as follows —

1. DEFINITIONS

In this Agreement unless the contrary intention appears or the context otherwise requires —

“advise”, “agree”, “apply”, “approve”, “authorize”, “certify”, “consent”, “direct”, “inform”, “nominate”, “notice”, “notify”, “request”, “require”, or “specify” means advise, agree, apply, approve, authorize, certify, consent, direct, inform, nominate, notice, notify, request, require, or specify in writing as the case may be and any inflexion or derivation of any of those words has a corresponding meaning;

“**City**” means the City of Bayswater, a municipality and body corporate under the *Local Government Act 1960*;

“**Concept Plans**” means the plans respectively described as —

- a site plan (drawing number A001)
- a ground floor plan (drawing number A020)
- a first floor plan (drawing number A021)

copies of which have been signed by the parties for the purpose of identification;

“**CML**” means The Colonial Mutual Life Assurance Society Limited its successors and permitted assigns;

“**CPI**” means the Consumer Price Index compiled by the Australian Bureau of Statistics for Perth (Capital City) (All Groups) or any substitute therefor accepted by the Government of the Commonwealth of Australia from time to time provided that:

- (a) if the CPI Index Number base adopted by the Australian Statistician for the CPI Index Number is at any time updated the CPI Index Number is to be appropriately adjusted from time to time;
- (b) if at any time the Consumer Price Index is discontinued, there is to be substituted therefor the alternative method of computing changes in the cost of living which is mutually agreed between the State and the Joint Venturers during the period of 30 days after written notice given by either the State or the Joint Venturers to the other, or failing agreement, which in the opinion of an expert appointed by the President for the time being of the Institute of Chartered Accountants (Western Australian Division) at the request of the State or the Joint Venturers or both of them most closely reflects changes in the cost of living for the Perth Metropolitan Area (the costs of that expert being borne by the State and the Joint Venturers in equal shares); and
- (c) if any alternative index is determined in accordance with paragraph (b) and that index is at any time thereafter discontinued, the reference to the CPI means from time to

time the index determined subject to and in accordance with the provisions of paragraph (b);

“CPI Index Number” means the Index Number compiled and issued by the Australian Bureau of Statistics for the CPI for and in respect of a particular CPI Quarter;

“CPI Quarter” means the respective three monthly periods adopted by the Australian Bureau of Statistics for the compilation and issue of the CPI;

“Crown” means the Crown in right of the State of Western Australia;

“Crown Grant” means a Crown Grant under the Land Act;

“Development Area” means that part of the land within the stippled border on the Plan being —

- (a) the freehold land, particulars of which are set out in **Schedule 2**;
- (b) Reserve 40963 (Swan Locations 11235 and 11236);
- (c) the land cross hatched and marked “ROAD” on the Plan;
- (d) the land stippled and marked “JOHNSMITH STREET” on the Plan; and
- (e) the Water Authority Land

as to which the Joint Venturers are for the time being registered as the proprietors of an estate, either in fee simple or leasehold;

“Dollars” or \$ means amounts expressed in Australian currency;

“Johnsmith Road Reserve” means the land described in paragraph (d) of the definition of the Development Area;

“Joint Venturers” means MSC and CML and any person to whom the rights of MSC and CML are assigned in accordance with the provisions of clause 16;

“Land Act” means the *Land Act 1933*;

“**Minister**” means the Minister in the Government of the State for the time being responsible (under whatever title) for the administration of the ratifying Act;

“**Morley Shopping Centre**” means the Shopping Centre of that name as now on the land, or part of the land, described in **Schedule 2**;

“**Morley Redevelopment**” or “**the Redevelopment**” means the redevelopment of the Morley Shopping Centre in accordance with the text in Schedule 3 and the Concept Plans, as amended from time to time by Agreement between the State and the Joint Venturers;

“**MSC**” means Morley Shopping Centre Pty. Limited, its successors and permitted assigns;

“**parties**” means the State and the Joint Venturers, and

“**party**” is a reference to any of them;

“**Plan**” means Department of Land Administration Miscellaneous Diagram 347 a copy of which is **Schedule 1** to this Agreement;

“**Project Commencement Date**” means the commencement date notified to the Minister pursuant to **clause 4 (1)**;

“**Project Completion**” means completion of the Redevelopment in accordance with this Agreement to the state where the whole of the Morley Shopping Centre, as so redeveloped, is capable of occupation for its intended purpose;

“**ratifying Act**” means the Bill referred to in **clause 3** when that Bill is passed and comes into operation as an Act as contemplated by that clause;

“**Redeveloped Shopping Centre**” means the Morley Shopping Centre as redeveloped and expanded in accordance with this Agreement;

“**Russell Street Reserve**” means the land described in paragraphs (b) and (c) of the definition of the Development Area;

“**State**” includes the authorities and instrumentalities of the State of Western Australia;

“Statutory Requirements” means all approvals, consents, permits, or licences necessary for the purposes of the Redevelopment from the State, any government department, authority, instrumentality or local government authority, and includes, without limiting the generality of the foregoing, all approvals, consents, permits, and licences, for engineering drawings, construction plans, earthworks and structures necessary for the purposes of the Redevelopment;

“subsidiary legislation” includes any proclamation, regulation, rule, by-law, order, notice, rule of court, town planning scheme, resolution, or other instrument, made under any Act of the State or of the Commonwealth of Australia or subsidiary legislation for the time being in force and having legislative effect;

“this Agreement” means this Agreement (including its Recitals and Schedules) whether in its original form or as from time to time added to varied or amended;

“Water Authority” means the body corporate known as the Water Authority of Western Australia established by the *Water Authority Act 1984*;

“Water Authority Land” means the land described in **Schedule 4**;

“written law” has the same meaning as is given to that term in the *Interpretation Act 1984*.

2. **INTERPRETATION**

In this Agreement unless the contrary intention appears —

- (a) power given under any clause other than clause 19 to extend any period or date is without prejudice to the power of the Minister under **clause 19**;
- (b) the plural includes the singular and vice versa and any gender includes every other gender;
- (c) reference to —
 - . a clause is to a clause of this Agreement;

- . a subclause is to a subclause of the clause in which the reference occurs;
 - . a paragraph is to a paragraph of the clause or subclause, as the case may be, in which the reference occurs;
- (d) clause headings do not affect the interpretation or construction of this Agreement;
- (e) a reference to an Act includes the amendments to that Act for the time being in force and also any Act passed in substitution for it and the subsidiary legislation for the time being in force under it; and
- (f) a reference to a person includes a corporation and a body politic.

3. **RATIFICATION AND OPERATION**

- (1) The State shall introduce and sponsor a Bill in the Parliament of Western Australia to ratify this Agreement and endeavour to secure its passage as an Act prior to 11 December 1992 or such later date as the parties may agree.
- (2) The provisions of this Agreement other than this **clause 3** shall not come into operation until the Bill referred to in subclause (1) has been passed by the Parliament of Western Australia and the provisions of that Bill ratifying this Agreement come into operation as an Act.
- (3) If before 11 December 1992 or such later date as may be agreed pursuant to subclause (1) the provisions of the Bill referred to in that subclause ratifying this Agreement have not commenced to operate as an Act then unless the parties otherwise agree this Agreement shall then cease and terminate and none of the parties shall have any claim against any of the others of them with respect to any matter or thing antecedent to, or arising out of or done, performed, or omitted to be done or performed, under this Agreement.
- (4) On the provisions of the Bill referred to in subclause (1) ratifying this Agreement commencing to operate as an Act this Agreement shall operate and take effect.

4. **THE REDEVELOPMENT**

- (1) The Joint Venturers shall on or before 30 April 1993 (or such later date as the Minister may allow pursuant to clause 19) notify the Minister that the Joint Venturers —
 - (a) will proceed; or
 - (b) will not proceed

with the Redevelopment and shall, if the Joint Venturers notify the Minister that they will proceed with the Redevelopment, by the same notice advise the Minister as to the time programme for the commencement (which must be a date not later than 1 August 1993) and completion (which must be a date not later than 1 August 1996) of the Redevelopment.

- (2) If the Joint Venturers —
 - (a) notify the Minister pursuant to subclause (1) that the Joint Venturers will not proceed with the Redevelopment; or
 - (b) fail to notify the Minister as required by subclause (1) by the due date

this Agreement thereupon cease and terminate.

5. **OBLIGATION TO CONSTRUCT**

- (1) If the Joint Venturers notify the Minister pursuant to clause 4 (1) that the Joint Venturers will proceed with the Redevelopment the Joint Venturers shall, subject to Statutory Requirements and applicable laws, proceed with the Redevelopment to completion without material alteration and in accordance with the Redevelopment timetable as notified to the Minister pursuant to **clause 4 (1)**.
- (2) The Joint Venturers shall from time to time at the request of the Minister inform the Minister of any details or information in relation to the Redevelopment, including but without limitation, the progress of the Redevelopment, as the Minister may reasonably request.
- (3) The Joint Venturers shall to the extent it is within the power of the Joint Venturers to do so permit the State by its officers, employees, agents, and nominees to enter upon the Development Area pending

Project Completion to inspect the progress of the Redevelopment, and the Joint Venturers shall afford those officers, employees, agents and nominees such assistance and facilities as they may reasonably require.

6. **LICENCE TO ENTER**

- (1) The State hereby grants to the Joint Venturers an exclusive licence for the Joint Venturers and their agents contractors and employees to enter, with all necessary vehicles plant and equipment, upon the Russell Street Reserve and the Johnsmith Road Reserve for the purpose of carrying out the Redevelopment.
- (2) The licence granted by subclause (1) shall take effect one month after the Project Commencement Date or such earlier date as the Minister may notify to the Joint Venturers and shall automatically terminate, without the necessity for any notice or any other action by any of the parties —
 - (a) upon termination of this Agreement;
 - (b) as to any particular area subject of the licence, upon that area being —
 - (i) leased to the Joint Venturers pursuant to **clause 7**;
 - (ii) granted to the Joint Venturers in fee simple pursuant to **clause 8**; or
 - (c) on the completion of all works necessary to implement the Redevelopment,

whichever occurs soonest.

7. **CROWN LEASE**

Upon Project Completion, or at such earlier time as the Minister considers appropriate, the State shall grant or cause to be granted to the Joint Venturers a lease of Russell Street Reserve, as then surveyed, under section 117 of the Land Act but including a right or option on the part of the Joint Venturers to acquire freehold title, in whole or in part, to the Russell Street Reserve such lease except as otherwise provided in this Agreement to be subject to the Land Act but in the form set out in

Schedule 5 with such variations as circumstances may render necessary and as are agreed to by the parties.

8. **CROWN GRANT**

Upon the Project Completion, or at such earlier time as the Minister considers appropriate, and subject to payment to the State of \$200,000.00 and of all other usual and applicable fees the State shall cause to be issued to and in the name of the Joint Venturers as tenants in common in equal shares a Crown Grant of the Johnsmith Road Reserve subject to the exceptions reservations and conditions usual in Crown Grants but otherwise free from encumbrances.

9. **EASEMENTS AND OTHER LAND RIGHTS**

The State shall in relation to the Water Authority Land cause the Water Authority to grant to the Joint Venturers —

- (a) upon Project Completion or at such earlier time as the Minister after consultation with the Water Authority considers appropriate —
 - (i) an easement over the Water Authority Land in the terms set out in **Part A** of **Schedule 6**; and
 - (ii) an option to purchase the Water Authority Land in the terms set out in **Part B** of **Schedule 6**;
- (b) a licence to enter the Water Authority Land pending grant of the easement referred to in paragraph (a) for the purpose of carrying out those improvements in relation to the Redevelopment as may be agreed between the Water Authority and the Joint Venturers.

10. **SURVEYS**

Any surveys of land required for the purposes of this Agreement within the Development Area shall be carried out at the expense of the Joint Venturers.

11. **WATER RATES**

- (1) Water Rates payable to the Water Authority in relation to the Development Area will be amounts determined in accordance with the succeeding provisions of this clause.
- (2) If Project Completion occurs in the Rating Year 1994/1995, as is anticipated, the Water Rates for that Rating Year will, subject to **subclause (4)**, be —
 - (a) If the GRV as at 1 July 1993 is less than or equal to \$22,000,000, an amount determined by applying the rate in the \$ of GRV specified in **subclause (9)** to the GRV as at 1 July 1993 less \$500,000.00; or
 - (b) if the GRV at 1 July 1993 exceeds \$22,000,000, \$1,500,000 increased by the amount by which the GRV exceeds \$22,000,000 multiplied by .0908.
- (3) If Project Completion occurs in the Rating Year 1995/1996 or in a later Rating Year, then the Water Rates in the Rating Year in which Project Completion occurs will, subject to **subclause (4)**, be the Base Amount increased by the same percentage as the percentage increase in the CPI which occurs during the period 31 March 1994 to 31 March in the year preceding Project Completion.
- (4) If Project Completion occurs otherwise than on the first day of a Rating Year, Water Rates payable in respect of the Rating Year in which Project Completion occurs shall be the aggregate of —
 - (a) Water Rates which but for the provisions of this Agreement are payable in respect of that Rating Year;
 - (b) that proportion of the amount by which the Base Amount, or as the case may be, of the Base Amount as increased by the operation of **subclause (3)**, exceeds the amount referred to in paragraph (a) as is the same as the proportion which the number of days from Project Completion to the end of the then current Rating Year bears to 365.
- (5) (a) Subject to the succeeding provisions of this clause, in the 19 Rating Years following the Rating Year in which Project Completion occurs the Water Rates payable shall be the amount payable in the preceding Rating Year increased by the same percentage as the annual percentage increase in the CPI during the immediately preceding Rating Year;

- (b) for the purposes of **subclause 5 (a)** —
- (i) the increase in the CPI will be calculated for the period of 12 months which ends on the 31 March which immediately precedes the commencement of the relevant Rating Year;
 - (ii) the Water Rates payable in respect of the Rating Year in which Project Completion occurs shall be taken to be the Base Amount, or as the case may be, the Base Amount as increased by the operation of **subclause (3)**.
- (6) If during the period specified in **subclause 5 (a)** the Redeveloped Shopping Centre is further expanded by the construction of a new building or other development (the “**New Development**”), Water Rates payable in respect of the Development Area will be increased by an amount determined in accordance with the succeeding provisions of this clause.
- (7) The amount of the increase in the Water Rates (“**the Incremental Increase**”) will be (a) — (b) where —
- (a) = Water Rates determined in accordance with the GRV of the Development Area following completion of the New Development and calculated on the basis of the scale of Water Rates then applicable for commercial properties generally within the Perth Metropolitan Area (the “**Current Scale**”)
 - (b) = Water Rates determined in accordance with the GRV of the Development Area prior to the New Development and calculated on the basis of the Current Scale.

For the avoidance of doubt, the calculation in this subclause will not include the concession in respect of Water Rates specified in **subclause (2)**.

- (8) If and when an Incremental Increase occurs —
- (a) for the purpose of calculating, pursuant to subclause (5), the Water Rates payable in respect of the Rating Year following that in which the Incremental Increase occurred and subsequent Rating Years the full amount of the Incremental Increase is deemed to have been payable in the Rating Year in which it occurred;

- (b) unless the New Development giving rise to the Incremental Increase was completed on the first day of a Rating Year, in which case the whole of the Incremental Increase is to be added to Water Rates payable, the Water Rates payable in respect of the Rating Year in which the New Development was completed shall increase by only that proportion of the Incremental Increase as is the same as the proportion which the number of days from the date of completion of the New Development to the end of the then current Rating Year bears to 365.
- (9) For the purpose of **subclause (2)** the schedule of rates in the \$ of GRV, expressed in cents, is as follows —

GRV	Water	Sewerage	Drainage	Total
up to \$8,000	4.68	4.48	.70	9.86
Next \$1,592,0000	4.01	4.45	.70	9.16
greater than \$1,600,000	3.97	4.41	.70	9.08

- (10) (a) Water Rates payable pursuant to this clause shall entitle the Joint Venturers to a water allowance free of charge, in each Rating Year, of 400,000 kilolitres;
- (b) If in any Rating Year the quantity of water supplied to the Development Area by the Water Authority exceeds the quantity specified in paragraph (a), the Joint Venturers shall pay for the excess in accordance with any then applicable written law.
- (11) Nothing in this clause affects Water Rates or other charges otherwise payable to the Water Authority prior to Project Completion (including headworks charges).
- (12) In this clause and in **clause 12** (where applicable) unless the contrary intention appears or the context otherwise requires —

“**Base Amount**” means the amount calculated pursuant to **subclause (2)** without reference to **subclause (4)**;

“completion” in relation to a New Development means capable of occupation or use;

“GRV” means the gross rental value of the Development Area following Project Completion as determined under the Valuation of Land Act 1978;

“Rating Year” means a period commencing on 1 July in a year and ending on 30 June in the following year and if preceded by a reference to 2 calendar years means the period commencing on 1 July in the first of those years and ending on 30 June in the second of those years;

“Water Rates” means charges in respect of water supply, sewerage and drainage of the kind presently levied by the Water Authority under —

- (a) Part 2 of Division 1 of Schedule 1;
- (b) Part 2 of Schedule 2; and
- (c) Part 2 of Schedule 3

of the *Water Authority (Charges) By-Laws 1987*.

12. MUNICIPAL RATES

- (1) Municipal Rates payable to the City in relation to the Development Area will be amounts determined in accordance with the succeeding provisions of this clause.
- (2) Subject to **subclause (3)** Municipal Rates for the Rating Year in which Project Completion occurs will be the lesser of —
 - (a) \$700,000.00; and

- (b) the amount which would have been assessed for Municipal Rates on the basis of a rate of .053692 of the GRV.
- (3) If Project Completion occurs otherwise than on the first day of a Rating Year, Municipal Rates payable in respect of the Rating Year in which Project Completion occurs shall be the aggregate of —
 - (a) Municipal Rates which but for the provisions of this Agreement are payable in respect of that Rating Year;
 - (b) that proportion of the amount by which the Base Amount exceeds the amount referred to in paragraph (a) as is the same as the proportion which the number of days from Project Completion to the end of the then current Rating Year bears to 365.
- (4) (a) In the 19 Rating Years following the Rating Year in which Project Completion occurs, the Municipal Rates payable shall be the amount payable in the preceding Rating Year increased by the same percentage as the annual percentage increase in the CPI during the immediately preceding Rating Year increased by the lesser of —
 - (i) the same percentage of the annual percentage increase in the CPI during the immediately preceding Rating Year; or
 - (ii) the percentage increase in the City's rates for that year;

assuming the Municipal Rates payable in the Rating Year in which Project Completion occurred were the Base Amount;

- (b) for the purposes of **subclause 4 (a)** the increase in the CPI will be calculated for the period of 12 months which ends on the 31 March which immediately precedes the commencement of the relevant Rating Year.

(5) In this clause —

“**Base Amount**” means the amount calculated pursuant to **subclause (2)** without regard to **subclause (3)**;

“**Municipal Rates**” mean rates of the kind presently levied by the City under Division 4 of Part XXV of the *Local Government Act 1960*.

13. **STAMP DUTY**

- (1) Subject to **subclause (2)** the State after the Project Commencement Date will upon application by the Joint Venturers to the Minister, within 30 days after receipt of the application, repay to the Joint Venturers stamp duty paid in respect of the instruments evidencing the several transactions, particulars of which are set out in **Schedule 7**, necessary to establish the joint venture referred to in **Recital A**.
- (2) The amount repaid pursuant to subclause (1) will not exceed \$1,500,000.

14. **MODIFICATION OF LAND ACT**

- (1) For the purposes of this Agreement the Land Act is deemed to be modified by —
 - (a) the inclusion of a power to grant the licence to enter granted by **clause 6**; and
 - (b) the inclusion of a power for the Minister for Lands to grant a lease under section 117 of the Land Act in the form set out in **Schedule 5** and, in that lease or separately, to grant the right or option referred to in **clause 7**; and

- (c) the inclusion of a power for the Governor to issue to the Joint Venturers the Crown Grant referred to in **clause 8** and, if the right or option referred to in **clause 5** is exercised, a Crown Grant of the land in respect of which the right or option is exercised subject to the sub-lease granted pursuant to **clause 3 (a)** of **Schedule 5** if the circumstances so require.
- (2) For the purposes of **subclause 1 (c)**, the sublease referred to in that subclause shall be deemed to survive the surrender or termination of the lease pursuant to which it is granted.

15. **USE OF LOCAL LABOUR PROFESSIONAL SERVICES AND MATERIALS**

- (1) The Joint Venturers shall in relation to the Redevelopment and for the purposes of this Agreement —
- (a) except in those cases where the Joint Venturers can demonstrate it is impracticable to do so, use labour available within Western Australia or if such labour is not available then except in those cases where the Joint Venturers can demonstrate that it is impracticable to do so, use labour otherwise available within Australia;
 - (b) as far as it is reasonable and economically practicable to do so use the services of engineers, surveyors, architects and other professional consultants, project managers, manufacturers, suppliers and contractors resident and available within Western Australia or if such services are not available within Western Australia then, as far as it is reasonable and economically practicable to do so, use the services of such persons otherwise available within Australia;
 - (c) during design and when preparing specifications calling for tenders and letting contracts for works materials plant equipment and supplies (which shall at all times, except

where it is impracticable to do so, use or be based upon Australian Standards and Codes) ensure that suitably qualified Western Australian and Australian suppliers manufacturers and contractors are given fair and reasonable opportunity to tender or quote;

- (d) give proper consideration and where possible preference to suppliers manufacturers and contractors located in Western Australia when letting contracts or placing orders for works, materials, plant, equipment and supplies where price quality delivery and service are equal to or better than that obtainable elsewhere or, subject to the foregoing, give that consideration and where possible preference to other suppliers manufacturers and contractors located in Australia; and
 - (e) if notwithstanding the foregoing provisions of this subclause a contract is to be let or an order is to be placed with other than a Western Australian or Australian supplier, manufacturer or contractor, give proper consideration and where possible preference to tenders arrangements or proposals that include Australian participation.
- (2) Except as otherwise agreed by the Minister the Joint Venturers shall in every contract entered into with a third party for the supply of services labour works materials plant equipment and supplies for the purposes of the Redevelopment, require as a condition of such contract that such third party shall undertake the same obligations as are referred to in subclause (1) and shall report to the Joint Venturers concerning such third party's implementation of that condition.
- (3) The Joint Venturers shall submit a report to the Minister at monthly intervals or such longer period as the Minister determines commencing from the date of this Agreement concerning the Joint Venturers implementation of the provisions of this clause together with a copy of any report received by the Joint Venturers pursuant to subclause (2) during that month or longer period as the case may

be, but the Minister may agree that any such reports need not be provided in respect of contracts of such kind or value as the Minister may from time to time determine.

- (4) The Joint Venturers shall keep the Minister informed on a regular basis as determined by the Minister from time to time or otherwise as required by the Minister during the currency of this Agreement of any services (including any elements of project investigation design and management) and any works materials plant equipment and supplies that they may be proposing to obtain from or have carried out or permit to be obtained from or carried out outside Australia in relation to the Redevelopment together with their reasons therefor and shall as and when required by the Minister consult with the Minister with respect thereto.

16. ASSIGNMENT

- (1) Subject to the provisions of this clause a Joint Venturer may assign mortgage charge sub-let or dispose of the whole or any part of the rights of the Joint Venturer under this Agreement (including the Joint Venturer's rights to or as the holder of any lease, licence or easement) and of the obligations of the Joint Venturer under this Agreement subject however to the consent of the Minister in the case of an assignment mortgage charge sub-letting or disposition prior to Project Completion and in the case of an assignment sub-letting or disposition to the assignee sub-lessee or disponent (as the case may be) executing in favour of the State (unless the Minister otherwise determines) a Deed of Covenant in a form approved by the Minister to comply with and observe and perform the provisions of this Agreement on the part of the Joint Venturer to be complied with observed or performed in regard to the matter or matters the subject of such assignment sub-letting or disposition.
- (2) Notwithstanding anything contained in or anything done under or pursuant to **subclause (1)** each Joint Venturer shall at all times during the currency of this Agreement be and remain liable for the due and punctual performance and observance of all the

covenants and agreements on part of the Joint Venturers contained in this Agreement but the Minister may agree to release a Joint Venturer from such liability where the Minister considers such release will not be contrary to the interests of the State.

17. **VARIATION**

- (1) The parties may from time to time by agreement add to substitute cancel or vary all or any of the provisions of this Agreement or of any lease licence easement grant or other title granted under or pursuant to this Agreement for the purpose of more efficiently or satisfactorily implementing or facilitating any of the objects of this Agreement.
- (2) The Minister shall cause any agreement made pursuant to subclause (1) in respect of any addition substitution cancellation or variation of the provisions of this Agreement to be laid on the Table of each House of Parliament within 12 sitting days next following its execution.
- (3) Either House may, within 12 sitting days of that House after the agreement has been laid before it pass a resolution disallowing the agreement, but if after the last day on which the agreement might have been disallowed neither House has passed such a resolution the agreement shall have effect from and after that last day.

18. **FORCE MAJEURE**

- (1) In this Agreement force majeure means events or occurrences and the effects of them beyond the reasonable control of the party claiming force majeure which affects the ability of that party to observe and perform its obligations under this Agreement, and includes war, invasion, riot, civil or military disturbances, sabotage, strikes, picketing or other labour disputes or disturbances, expropriation, lightning, fire, flood or threats of floods, earthquake, storm, cyclone, explosion, governmental restrictions

or other governmental actions or inactions (unless such restrictions, actions, or inactions arise out of the failure of the party affected to comply with any governmental requirement), and orders or temporary or permanent injunctions of any duly constituted court of competent jurisdiction or any duly authorized administrative agency or officer (unless any such order or injunction was imposed by reason of the failure of the party affected to observe and obey any legal requirement or obligation under this Agreement), but does not include inability to obtain finance on acceptable terms.

- (2) If any party is unable, wholly or in part, by reason of force majeure to carry out any obligation on it, and notifies the other party that it wishes to claim that it is affected by force majeure, the obligation shall be suspended so far as it is affected by the force majeure during the period from the giving of the notice that force majeure is claimed until the force majeure and the effects of the force majeure cease. The notice claiming force majeure shall contain the particulars of the force majeure, and so far as is known, the extent to which the party claiming force majeure considers that it will be unable to perform or be delayed in performing its obligations.
- (3) A party affected by force majeure shall take all reasonable steps to remedy or remove the force majeure and the effect of it as quickly as possible.
- (4) Where a party gives a notice pursuant to this clause it shall thereafter during the continuance of the force majeure at least every five days give notice to the other party of the then probable extent to which it will be unable to perform or be delayed in performing its obligations and of any significant changes relative to the force majeure since it gave its last notice to the other party.

19. **POWER TO EXTEND PERIODS**

Notwithstanding any provision of this Agreement, the Minister may at the request of the Joint Venturers from time to time extend or further extend any period or vary or further vary any date referred to in this Agreement for such

period or to such later date as the Minister thinks fit whether or not the period to be extended has expired or the date to be varied has passed.

20. **TERM**

Subject to **clause 19**, this Agreement will automatically cease and terminate (subject however to the provisions of **clause 22**) without the need for either party to give the other any notice whatever, when the rights of all parties under this Agreement have been exhausted or, as the case may be, all obligations of all parties under this Agreement, have been performed, or in either case under any lease granted pursuant to this Agreement.

21. **TERMINATION OF THIS AGREEMENT**

(1) If —

- (a) (i) the Joint Venturers make default which the State considers material in the due performance or observance of any of the covenants or obligations of the Joint Venturers contained in this Agreement on the part of the Joint Venturers to be performed or observed; or
- (ii) the Joint Venturers abandon or repudiate this Agreement or any operations which by this Agreement the Joint Venturers are obliged to carry on,

and such default repudiation or abandonment is not remedied or such operation resumed within a period of 90 days after notice is given by the State as provided in **subclause (2)** or, if the default or abandonment is referred to arbitration, then within the period fixed by the arbitrator mentioned in **subclause (3)**;

- (b) a Joint Venturer whilst entitled to the benefit of this Agreement goes into liquidation (other than a voluntary liquidation for the purpose of reconstruction to which the Minister has given prior

written consent) and unless within 3 months from the date of such liquidation the interest of that Joint Venturer in this Agreement is assigned to an assignee or assignees pursuant to **clause 16**; or

- (c) The Joint Venturers permanently cease to use and operate the Development Area as a shopping centre

the State may by notice to the Joint Venturers terminate this Agreement.

- (2) The State in a notice given by it under **subclause (1)** shall specify the nature of the default or other grounds so entitling the State to exercise its right of termination and where appropriate and known to the State the party or parties responsible therefor and the State shall give the notice to the Joint Venturers and all such assignees mortgagees chargees and disponees for the time being of the Joint Venturer's rights to or in favour of whom or by whom an assignment mortgage charge or disposition has been effected in terms of **clause 16** whose name and address for service of notices has previously been notified to the State by the Joint Venturers or by any such assignee, mortgagee, chargee or disponee.
- (3) If the Joint Venturers contest the alleged default, abandonment or repudiation referred to in **paragraph (a)** of **subclause (1)** the Joint Venturers shall within 60 days after notice is given by the State as provided in **subclause (2)** refer the matter in dispute to arbitration, and if the matter in dispute is decided against the Joint Venturers shall comply with the arbitration award within a reasonable time to be fixed by that award but if the arbitrator finds that there was a *bona fide* dispute and that the Joint Venturers were not dilatory in pursuing the arbitration, the time for compliance with the arbitration award shall not be less than 90 days from the date of such award.
- (4) If the default referred to in **paragraph (a)** of **subclause (1)** is not remedied after receipt of the notice referred to in **subclause (1)** or within the time fixed by the arbitration award as provided in **subclause (3)**, the State instead of terminating this Agreement because of the default may itself remedy

the default or cause it to be remedied (for which purpose the State by its agents, employees or otherwise shall have full power to enter upon and to make use of all plant machinery and installations upon land owned or occupied by the Joint Venturers) and the actual costs and expenses incurred by the State in remedying or causing the default to be remedied shall be payable by the Joint Venturers to the State on demand.

22. **EFFECT OF TERMINATION**

- (1) On the cessation or termination of this Agreement whether pursuant to **clause 21** or otherwise —
 - (a) except as otherwise agreed by the Minister the rights of the Joint Venturers in or under this Agreement shall thereupon cease and terminate but without prejudice to the liability of either of the parties in respect of any antecedent breach or default under this Agreement or in respect of any indemnity given under this Agreement;
 - (b) the Joint Venturers shall forthwith pay to the State —
 - (i) all moneys which may then have become payable or accrued due; and
 - (ii) if the cessation or termination occurs prior to Project Completion an amount equal to the amount repaid by the State pursuant to **clause 13**;
 - (c) If the cessation or termination occurs prior to Project Completion the State, if it is practicable to do so, will, if the City consents, procure that the Russell Street Reserve, other than that part of the Russell Street Reserve referred to in paragraph (c) of the definition of the Development Area, is created as a Reserve under the Land Act for the purpose of parking and vested in the City;

- (d) except as specified in this subclause and as otherwise provided in this Agreement, neither of the parties shall have claim against the other in respect of any matter or thing in or arising out of this Agreement.
- (2) Nothing in **subclause (1)** shall affect any Crown Grant or lease issued under this Agreement prior to the cessation or termination of this Agreement.

23. **ENVIRONMENTAL PROTECTION**

Nothing in this Agreement shall be construed to exempt the Joint Venturers from compliance with any requirement in connection with the protection of the environment arising out of or incidental to activities of the Joint Venturers under or contemplated by this Agreement that may be made under the *Environmental Protection Act 1986*. The Joint Venturers shall comply with the conditions attached to any environmental approval as though those conditions were expressly set out in this Agreement as obligations of the Joint Venturers.

24. **APPLICATION OF STATUTE LAW**

Except as expressly set out in this Agreement, nothing in this Agreement exempts the Joint Venturers from the provisions of any applicable Act of the Commonwealth of Australia or any subsidiary legislation under any such Act, or from the provisions of any applicable written law including, without limitation, Statutory Requirements.

25. **INDEMNITY**

The Joint Venturers indemnify and will keep indemnified the State and its employees, agents and contractors in respect of all actions, claims, demands, or costs of third parties, arising out of or in connection with any works carried out by or on behalf of the Joint Venturers pursuant to this Agreement or relating to operations of the Joint Venturers under or contemplated by this Agreement or arising out of or in connection with the construction or use by the Joint Venturers or their employees, agents,

contractors, or assignees of the Joint Venturer's works or services the subject of or contemplated by this Agreement or the plant apparatus or equipment installed in connection therewith.

26. **ARBITRATION**

- (1) Subject to **subclause (4)** any dispute or difference between the State and the Joint Venturers arising out of or in connection with this Agreement, the construction of this Agreement or as to the rights duties or liabilities of either the State or the Joint Venturers under this Agreement shall, in default of agreement between the parties and in the absence of any provision in this Agreement to the contrary, be referred of a single arbitrator to be appointed (if the parties to the arbitration do not agree upon an arbitrator) by the President for the time being of the Law Society of W.A. (Inc.) at the request of either the State or the Joint Venturers. Any such arbitration shall be conducted in accordance with the provisions of the *Commercial Arbitration Act 1985* and notwithstanding **section 20 (1)** of that Act each party may be represented at the arbitration by a duly qualified legal practitioner or other representative.
- (2) Except where otherwise provided in this Agreement, the provisions of this clause do not apply to any case where the State, the Minister or any other Minister in the Government of the State is by this Agreement given either expressly or impliedly a discretionary power.
- (3) The arbitrator of any submission to arbitration under this Agreement is hereby empowered upon the application of either of the parties to grant in the name of the Minister any interim extension of any period or variation of any date referred to in this Agreement which having regard to the circumstances may reasonably be required in order to preserve the rights of that party or of the parties hereunder and an award may in the name of the Minister grant any further extension or variation for that purpose.

- (4) Where in respect of any matter that might otherwise be referred to arbitration under this clause the Joint Venturers have a right of appeal under the *Town Planning and Development Act 1928*, the matter shall be determined in accordance with that Act and the provisions of **subclause (1)** do not apply.

27. **NOTICES**

- (1) Any notice to be given under this Agreement shall be hand delivered or sent by facsimile transmission or by prepaid post addressed as follows —

The State

The Minister for State Development
Capita Centre
197 St George's Terrace
PERTH WA 6000

Facsimile: (09) 327 5542

The Joint Venturers

Morley Shopping Centre Pty. Limited
800 Toorak Road
Tooronga
Victoria 3146

Attention: General Manager,
New Business — Property

Facsimile: (03) 829 3300

The Colonial Mutual Life Assurance Society
Limited
330 Collins Street
Melbourne 3000

Attention: Director — Property Investment
— Colonial Mutual Investment
Management

Facsimile: (03) 641 8396

- (2) Any notice so delivered or mailed or sent by facsimile transmission shall be deemed to be duly given and received at the actual time of delivery, or in the case of a facsimile transmission on the day after despatch.
- (3) Any party may change its address for receipt of notices, or facsimile number, at any time by giving notice to the other parties in the manner provided in this clause.
- (4) Any notice may be signed on behalf of the party giving it by any duly authorized representative, including its solicitors, or in the case of the State, if signed by the Minister or by a senior officer in the Public Service of the State acting at the direction of or under any delegation from the Minister.

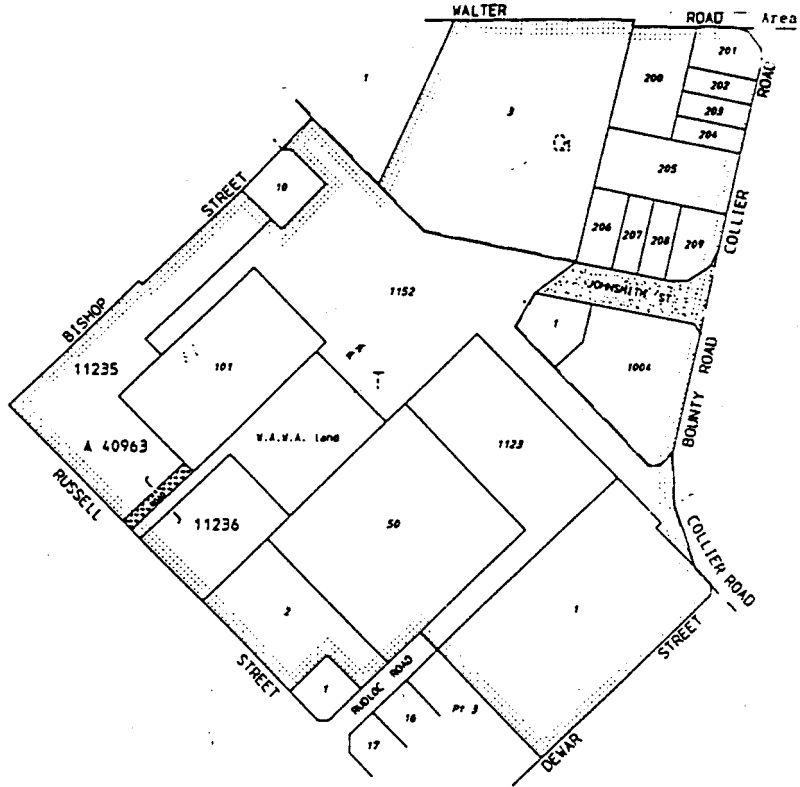
28. **PROPER LAW AND FORUM**

This Agreement shall be interpreted according to the law for the time being in force in Western Australia and the parties hereby irrevocably submit to the exclusive jurisdiction of the courts of Western Australia and courts hearing appeals from those courts.

SCHEDULE 1

DEVELOPMENT AREA PLAN

Reference: Clause 1
 Definition of
 Development Area



Graphics have been derived from the D O L A. Spatial Cadastral Data Base



MORLEY SHOPPING CENTRE REDEVELOPMENT		FILE No. 1617 / 989
DISTRICT SWAN		SCALE 1:2500
SUBJECT TO SURVEY		Registered on Public Plan
AMENDMENTS		Registered on Public Plan
Public Plan North 1924, 2000, 10, 20, 10, 21 & 16, 21		Registered on Public Plan
Prepared by B. J. Taylor	Date 1-11-1993	Registered on Public Plan
Checked <i>[Signature]</i>	Date 4.8.93	Registered on Public Plan
Approved <i>[Signature]</i>	Date 3.11.93	Registered on Public Plan
		DEPT. OF LAND ADMINISTRATION
		MISCELLANEOUS 347
		DIAGRAM No

SCHEDULE 2

MORLEY REDEVELOPMENT LAND

PARTICULARS OF FREEHOLD LAND

Reference: Clause 1
Definition of
Development Area

Portion of Swan Location Q1 and being Lot 200 on Plan 14988 being the whole of the land in Certificate of Title Volume 1690 Folio 946

Portion of Swan Location Q1 and being Lot 201 on Plan 14988 being the whole of the land in Certificate of Title Volume 1690 Folio 947

Portion of Swan Location Q1 and being Lot 202 on Plan 14988 being the whole of the land in Certificate of Title Volume 1690 Folio 948

Portion of Swan Location Q1 and being Lot 203 on Plan 14988 being the whole of the land in Certificate of Title Volume 1690 Folio 949

Portion of Swan Location Q1 and being Lot 204 on Plan 14988 being the whole of the land in Certificate of Title Volume 1690 Folio 950

Portion of Swan Location Q1 and being Lot 205 on Plan 14988 being the whole of the land in Certificate of Title Volume 1690 Folio 951

Portion of Swan Location Q1 and being Lot 206 on Plan 14988 being the whole of the land in Certificate of Title Volume 1690 Folio 952

Portion of Swan Location Q1 and being Lot 207 on Plan 14988 being the whole of the land in Certificate of Title Volume 1690 Folio 953

Portion of Swan Location Q1 and being Lot 208 on Plan 14988 being the whole of the land in Certificate of Title Volume 1690 Folio 954

Portion of Swan Location Q1 and being Lot 209 on Plan 14988 being the whole of the land in Certificate of Title Volume 1690 Folio 955

Portion of Swan Location Q1 and being Lot 1 the subject of Diagram 29399 being the whole of the land in Certificate of Title Volume 1278 Folio 955

Portion of Swan Location Q1 and being part of Lot 1004 on Plan 3263 (Sheet 1) being the whole of the land in Certificate of Title Volume 1772 Folio 649

Portion of Swan Location T and being part of Lot 1152 on Plan 3401 being the whole of the land in Certificate of Title Volume 1863 Folio 210

Portion of Swan Location T and being Lot 1123 on Plan 3401 being the whole of the land in Certificate of Title Volume 1848 Folio 251

Portion of Swan Location T and being part of Lot 1122 on Plan 3401 being the whole of the land in Certificate of Title Volume 1642 Folio 958

Portion of Swan Location T and being Lot 4 on Diagram 31786 being the whole of the land in Certificate of Title Volume 1487 Folio 425

Portion of Swan Location T and being Lot 101 the subject of Diagram 39772 being the whole of the land in Certificate of Title Volume 523 Folio 173A

Portion of Swan Location T and being Lot 50 the subject of Diagram 45128 being the whole of the land in Certificate of Title Volume 1354 Folio 259

Portion of Swan Location T and being Lot 6 on Diagram 35665 being the whole of the land in Certificate of Title Volume 472 Folio 103A

Portion of Swan Location T and being Lot 401 the subject of Diagram 45121 being the whole of the land in Certificate of Title Volume 1354 Folio 570

Portion of Swan Location T and being Lot 498 on Diagram 63581 being the whole of the land in Certificate of Title Volume 1628 Folio 570

Portion of Swan Location T and being Lot 2 on Diagram 39472 being the whole of the land in Certificate of Title Volume 1494 Folio 090

Portion of Swan Location Q1 and being Lot 3 on Diagram 24053 being the whole of the land in Certificate of Title Volume 1227 Folio 014 together with a right of carriageway over the portion of Lot 1 on the said Diagram as set out in Transfer 8606/1959

SCHEDULE 3

REDEVELOPMENT TEXT

Reference: Clause 1
Definition of Morley
Redevelopment

The redevelopment of the Morley Shopping Centre will comprise the demolition and building works necessary for —

- (1) the upgrading and renovation of the K-Mart Store;
- (2) the construction of —
 - (a) a new Coles Supermarket having a floor area of approximately 3,500 square metres;
 - (b) a new Myer Department Store having a floor area of approximately 18,000 square metres;
 - (c) a cinema complex having a floor area of approximately 4,000 square metres; and
 - (d) new specialty shops having a combined floor area of approximately 15,000 square metres

and otherwise generally as is necessary so as to enable the redevelopment of the Morley Shopping Centre in a manner substantially similar to that shown on the Concept Plans.

SCHEDULE 4

WATER AUTHORITY LAND

Reference: Clause 1
Definition and
Clause 9

Portion of Swan Location T being part of the Land on Diagram 27251 and being the whole of the land in Certificate of Title Volume 280 Folio 77A

Portion of Swan Location T being part of Lot 1152 on Plan 3401 and being the whole of the land in Certificate of Title Volume 1255 Folio 789

SCHEDULE 5

LAND ACT 1933

SECTION 117 LEASE

**MORLEY SHOPPING CENTRE REDEVELOPMENT
AGREEMENT ACT 1992**

Lease No.

ELIZABETH THE SECOND, by the Grace of God, Queen of Australia and Her other Realms and Territories, Head of the Commonwealth. To all to whom these presents shall come, GREETING: Know ye that:

WHEREAS:

- A. By Section 117 of the Land Act power is given to the Minister for Lands to lease any town, suburban or village lands on such terms as the Minister may think fit.
- B. Pursuant to the provisions of the Agreement, the State of Western Australia agreed to grant this lease, or cause this lease to be granted to the Lessee.

NOW, THEREFORE, We of our especial Grace, and in consideration of the premises, and also in consideration of the rents hereinafter reserved and on the part of the Lessee to be paid, and in exercise of the powers given by the Act, do by these presents demise and lease to the Lessee the leased premises TO HAVE AND TO HOLD the leased

premises subject to the powers, reservations, and conditions herein and in the Act, contained, and with all the rights, powers, and privileges conferred by the Act as are applicable hereto, unto the Lessee, for the Term YIELDING AND PAYING therefor during the Term unto Us, our Heirs and Successors, the yearly rent of One Hundred Dollars (\$100.00) payable in advance commencing on the _____ day of _____ 19_____ and thereafter on each subsequent anniversary of that date PROVIDED, nevertheless, that it shall at all times be lawful for Us, Our Heirs and Successors or for any person or persons acting in that behalf by Our or Their authority, to resume and enter upon possession of any part of the leased premises which it may at any time by Us, Our Heirs and Successors, be deemed necessary to resume for roads, tramways, railways, railway stations, bridges, canals, towings paths, harbour or river improvement works, drainage or irrigation works, quarries, and generally for any other works or purposes of public use, utility, or convenience, and for the purpose of exercising the power to search for minerals and gems hereinafter reserved, and such land so resumed to hold to Us, Our Heirs and Successors, as of Our or Their former estate, without making to the Lessee, or any person claiming under the Lessee, any compensation in respect of the resumption of a three metre wide strip along the Russell Street boundary of the leased premises, AND we do hereby save and reserve to Us, Our Heirs and Successors, all mines of gold, silver, copper, tin or other metals, ore, and mineral, or other substances containing metals and all gems and precious stones, and coal or mineral oil, and all phosphatic substances in and under the leased premises, with full liberty at all times to search and dig for and carry away the same; and for that purpose enter upon land or any part thereof; AND We do hereby save and reserve to Us, Our Heirs and Successors, all petroleum (as defined in the *Petroleum Act 1967*) on or below the surface of the leased premises with the right reserved to Us, Our Heirs and Successors and persons authorized by Us, Our Heirs and Successors to have access to the leased premises for the purposes of searching for and for the operations of obtaining petroleum in any part of the leased premises subject to and in accordance with the *Petroleum Act 1967* or any Act repealing and enacted in substitution for that Act: PROVIDED ALSO but subject to clause 3 (c) that if the Lessee shall, during the Term, at any time make default in payment of the rent hereby reserved, or shall fail or cease to use, hold, and enjoy the leased premises for the purposes set out in this lease, or shall fail or neglect to comply with, perform or fulfill all or any of the provisions of this lease or the conditions or provisions of the Act, it shall thereupon be lawful for Us, Our Heirs and Successors into and upon the leased premises, or any part thereof in the name of the whole to re-enter, and the same to have again, repossess and enjoy as if this deed had never been executed, without making any compensation to the Lessee.

CONDITIONS

The Lessee hereby covenants and agrees with Us, Our Heirs and Successors and with the Minister for Lands as follows —

1. **DEFINITIONS AND INTERPRETATION**

(1) Definitions

In this lease unless the contrary intention appears —

“Agreement” means the agreement between the State and the Lessee ratified by the *Morley Shopping Centre Redevelopment Agreement Act 1992*;

“Business Day” means a day on which trading banks are open for trading in both Western Australia and Victoria;

“CPI” means the Consumer Price Index compiled by the Australian Bureau of Statistics for Perth (Capital City) (All Groups) or any substitute therefor accepted by the Government of the Commonwealth of Australia from time to time provided that:

- (a) if the CPI Index Number base adopted by the Australian Statistician for the CPI Index Number is at any time updated the CPI Index Number is to be appropriately adjusted from time to time;
- (b) if at any time the Consumer Price Index is discontinued, there is to be substituted therefor the alternative method of computing changes in the cost of living which is mutually agreed in writing between the Lessor and the Lessee during the period of 20 Business Days after written notice given by either the Lessor or the Lessee to the other, or failing agreement, which in the opinion of an expert appointed by the President for the time being of the Institute of Chartered Accountants (Western Australian Division) at the request of the Lessor or the Lessee or both of them most closely reflects changes in the cost of living for the Perth Metropolitan Area (the costs of that expert being borne by the Lessor and the Lessee in equal shares); and

- (c) if any alternative index is determined in accordance with subclause (b) and that index is at any time thereafter discontinued, the reference to the CPI means from time to time the index determined subject to and in accordance with the provisions of subclause (b);

“CPI Index Number” means the Index Number compiled and issued by the Australian Bureau of Statistics for the CPI for and in respect of a particular CPI Quarter;

“CPI Quarter” means the respective three monthly periods adopted by the Australian Bureau of Statistics for the compilation and issue of the CPI;

“City” means the City of Bayswater, a municipality and body corporate under the *Local Government Act 1960*;

“Crown” means the Crown in right of the State of Western Australia;

“Institute of Valuers” means the Australian Institute of Valuers and Land Economists (Inc) (Western Australian Division);

“Land Act” means the *Land Act 1933*;

“leased premises” means the natural surface and the land below the natural surface to depth of 30 metres of the land described in the First Schedule together with all structures buildings improvements and appurtenances now or hereafter thereon other than works of a public nature;

“Lessee” means The Colonial Mutual Life Assurance Society Limited (ACN 004 405 556) of 330 Collins Street Melbourne, Victoria (**“CML”**) and Morley Shopping Centre Pty Limited (ACN 002 154 458) of 800 Toorak Road, Tooronga, Melbourne Victoria (**“MSC”**) as tenants in common as to one undivided half share each and the successors and permitted assigns of MSC and CML pursuant to clause 2 (r) to the intent that all covenants and obligations imposed upon and powers given by MSC and CML shall be binding upon and enforceable against MSC and CML and the successors and permitted assigns of the rights of MSC and CML under this lease;

“Lessor” means Her Majesty Queen Elizabeth the Second Her heirs and successors in right of the State;

“Local” or “Public Authority” means any municipality Health Board, Health Commissioner, Town Planning Board, Water Supply Sewerage and Drainage Board and every and any other board department commission person or authority whatsoever now or hereafter exercising or entitled to exercise under any present or future Act (Federal or State) any control or jurisdiction over or power in connection with the leased premises or any part thereof or the owner or occupier thereof and every officer or person acting under the authority of the local or public authority or under the authority of any Act or By-Law made thereunder;

“Market Value” means, in relation to the leased premises or the Option Premises, the market value of the leased premises or the Option Premises as the case may be determined having regard to the following:

- (a) a willing, but not anxious, buyer and seller;
- (b) a reasonable period in which to market and then negotiate a sale of the relevant property, taking into account the nature of the property and the state of the market;
- (c) that the value of the property will remain static during the period referred to in subclause (b);
- (d) that the relevant property has been freely exposed to the open market;
- (e) that no account will be taken of any higher price that might be paid by an adjoining owner of the relevant property; and
- (f) that any improvement constructed on the relevant land is disregarded;

“Metropolitan Region Scheme” means the Town Planning Scheme published in the *Government Gazette* of 9 August 1963 in accordance with Section 32 of the *Metropolitan Region Town Planning Scheme Act, 1959* as amended from time to time;

“Morley Land” means the land which adjoins Walter Road, Bishop Street, Russell Street, Dewer Street, Bounty Road and

Collier Road, Morley, Western Australia and being in particular the land specified in the Second Schedule;

“Morley Markets” means the property known as Morley Markets, which adjoins Bishop Street, Morley, Western Australia:

- (a) being Lot 103 on Diagram 37936 and being portion of Swan Location T:
- (b) which land has been subdivided in accordance with the provisions of the *Strata Titles Act 1985 (WA)* and in particular, in accordance with Strata Plan 21343; and
- (c) includes all lots registered on Strata Plan 21343;

“Morley Redevelopment” and **“the Redevelopment”** have the meanings ascribed to those terms respectively in the Agreement;

“Morley Shopping Centre” means the shopping centre constructed on the Morley Land as at the commencement date of this Lease, which shopping centre has been renovated and extended and includes any new shopping centre which may be constructed in place of the shopping centre constructed as at the date of commencement of this lease;

“Option Exercise Date” means the date of service of an Option Notice by the Lessee on the Lessor;

“Option Notice” means a notice from the Lessee to the Lessor exercising the option to purchase the Option Premises;

“Option Premises” means, as the case may be:

- (a) the whole of the leased premises; or
- (b) Part Property;

“Part Property” means any part of the leased premises designated by the Lessee as land which the Lessee wishes to acquire subject to that land being a lot within the meaning of

that word in section 2 (1) of the *Town Planning and Development Act 1928*,

“Qualified Valuer” means a person who:

- (a) is licensed as a valuer under the *Valuation of Land Act 1978* (WA);
- (b) is a member of the Institute of Valuers; and
- (c) has not less than 5 years’ experience in the valuation of suburban and regional shopping centres;

“State” means the State of Western Australia;

“Term” means 99 years from [];

“this lease” refers to this lease (including its recitals, schedules and annexures), whether its original form or as from time to time added to varied or amended;

“works of public nature” means rails pipes conduits wires cables tunnels or other things or structures whether of the same kind or of a different kind from those hereinbefore specified constructed laid suspended or placed by or on behalf of any Local or Public Authority.

(2) Interpretation

In this lease unless the contrary intention appears —

- (a) words importing one gender include all other genders;
- (b) words in the singular number include the plural and *vice versa*;
- (c) monetary references are references to Australian currency;
- (d) clause and subclause headings are inserted for ease of reference only and shall be disregarded in the interpretation or construction of this lease;

- (e) reference to —
 - (i) an Act by name is a reference to an Act of the Parliament of Western Australia;
 - (ii) an Act whether by name or otherwise includes the amendments to the Act for the time being in force and also any Act passed in substitution for it and all subsidiary legislation for the time being in force under it; and
 - (iii) a person includes a corporation.

2. **COVENANTS BY LESSEE**

The Lessee covenants and agrees with Us, Our Heirs and Successors and with the Minister for Lands as follows —

- (a) to pay the rent reserved by this lease in the manner specified in this lease without deduction or abatement;
- (b) to duly and punctually pay all present and future rates taxes charges assessments impositions and outgoings which are now or during the Term are payable in respect of or charged upon the leased premises or imposed upon the owner occupier or tenant of the leased premises;
- (c) to keep and maintain the leased premises and all buildings structures erections fixtures plant equipment and all improvements whatsoever now or at any time during the Term on the leased premises in good repair and proper working order (fair wear and tear excepted) and to yield up the same in such state of repair and condition to the Minister for Lands at the expiration or sooner determination of this lease and the Lessee agrees that on the expiration of the Term or the sooner determination of the Term all buildings structures or improvements whatsoever then erected on or affixed to the leased premises shall become and remain the absolute property of the Minister for Lands without compensation to the Lessee and the Lessee shall not have any tenant's rights to those buildings structures or improvements;

- (d) to duly and punctually perform observe comply with carry out and conform to the provisions of all statutes for the time being in force and of all rules regulations and by-laws made thereunder and for the time being in force relating to the leased premises;
- (e) not to do or leave undone or cause or permit or suffer to be done or left undone in or upon the leased premises or any part of the leased premises any act or thing which may be or become a nuisance damage annoyance or inconvenience to the Minister for Lands or to the occupiers of any of the adjoining or neighbouring land;
- (f) to perform discharge and execute all requisitions and works and do and perform all such acts and things upon to in respect of or affecting the leased premises or any part of the leased premises or the operations carried out on the leased premises as are or may be required or directed to be executed or done by the City and by any other Local or Public Authority or by order or in pursuance of any statute (State or Federal) now or hereafter in force or by order or in pursuance of any by-law or regulation under any such statute;
- (g) not to do or leave undone or suffer to be done or left unpaid any act matter or thing whereby a nuisance or anything in the nature of or which may be lawfully deemed to be a nuisance by the City or any Local or Public Authority within the meaning of any statute (State or Federal) now or hereafter in force or any regulations or by-laws made thereunder may exist arise or continue upon or in connection with the leased premises or any business carried on upon the leased premises or the use or occupancy of the leased premises AND to forthwith abate any such nuisance or alleged nuisance and carry out and comply with all the provisions of every such statute or by-law and of every requisition and order of any local or other public authority in reference to such nuisance or alleged nuisance;
- (h) to pay to the Minister for Lands or as directed by it on demand all sums of money which that Minister may at any time and from time to time after notice to the Lessee pay or expend or be called upon to repay in or about or in connection with performing discharging or executing any requisitions or works or abating any nuisance or alleged nuisance referred to in the immediately proceeding paragraphs (f) and (g) and which contrary to the

agreements therein contained the Lessee neglects or fails to perform discharge or execute;

- (i) to permit the Minister for Lands by agents servants and workmen with or without appliances and equipment at all times to enter into and upon the leased premises to inspect the leased premises for the purpose of ensuring that the Lessee is observing performing and complying with the covenants conditions and obligations of this lease and the Lessee shall forthwith execute all the works (including maintenance and the removal of any obstructions) required to be done by written notice by the Minister PROVIDED THAT if the Lessee does not within one month after service of such notice commence and diligently proceed with the execution of those works mentioned in such notice (including where necessary and with the prior consent of the Minister the undertaking by and at the expense in all things of the Lessee of any preliminary research investigations and studies relating to such works) it shall be lawful for the Minister by its contractors servants workmen and agents to enter upon the leased premises and execute such works and the cost thereof shall be a debt due from the Lessee and be forthwith recoverable by action;
- (j) to comply forthwith with any requirement in connection with the protection of the environment arising out of or incidental to the operations of the Lessee hereunder that may be made by or under any Act from time to time in force;
- (k) to indemnify and keep indemnified all Ministers of the Crown and the Crown and all instrumentalities of the Crown and all officers employees agents and contractors of such Ministers of the Crown and its instrumentalities and the employees of such agents and contractors from and against all actions claims costs proceedings suits and demands whatsoever (whether arising founded on or based in contract tort or statute or otherwise howsoever or any combination of them) which may at any time be brought maintained or made against all or anyone or more of them
 - (i) in respect of any loss (including loss of use) injury or damage of or to any nature or kind of property; and

- (ii) in respect of any death or injury sustained by any person including without limiting the generality of the foregoing an officer employee agent or contractor of any Minister of the Crown or an employee of such agent or contractor,

directly or indirectly during the Term or any extension of the Term caused by arising out of or in connection with —

- (iii) the use or occupation of the leased premises by the Lessee; or
- (iv) any work carried out by or on behalf of the Lessee pursuant to this lease; or
- (v) the Lessee's activities and operations business or otherwise whatsoever under this lease; or
- (vi) the pollution by oil or any other liquid garbage material refuse substance waste matter or thing of any class kind or description whatsoever of the leased premises or the land adjacent to the leased premises and of the air generally above the leased premises; or
- (vii) any default by the Lessee in the due and punctual performance, observance and compliance with any of its covenants agreements conditions or obligations contained in this lease,

PROVIDED ALWAYS that this indemnity shall not apply if and to the extent that any such matter event or thing has been caused or contributed to by any Minister of the Crown, the Crown or any instrumentality of the Crown or any officer servant workman agent or contractor of such Minister of the Crown, the Crown or its instrumentalities or the employees of any such agents or contractors;

- (l) to yield up the leased premises at the expiration or sooner termination of this lease in such state of repair and condition as is consistent with the proper performance by the Lessee of the covenants contained in this lease;
- (m) not without prior written consent of the Minister for Lands to build on affix to or instal on or permit or suffer to be built on affixed to or installed on the leased premises any

building structure erection fixture plant equipment or improvement otherwise than as contemplated by the Agreement;

- (n) to pay all reasonable fees and charges payable to any architect surveyor engineer expert or consultant employed or retained by or on behalf of the Minister for Lands in respect of services performed or work done relating to the approval of plans or drawings or otherwise in connection with the carrying out of the obligations of the Lessee under this lease;
- (o) to insure and keep insured the erections buildings and other improvements on the leased premises at any time against loss or damage by fire earthquake storm and tempest and such other risks as the Minister for Lands may from time to time reasonably require including but not limited to damage to or destruction of the plate glass in the windows screens mirrors doors advertisements and other parts of such erections and buildings to their full reinstatement and replacement (new for old) value with a reputable and substantial insurance office and to pay the premiums necessary for the above purposes on or before the days on which the same shall respectively become due and whenever so requested produce to the Minister for Lands or the Minister's agents or employees the policy or several policies of such insurance and the receipts for the current year's premiums and cause all moneys received by virtue of such insurance to be forthwith laid out in repair rebuilding or reinstating the leased premises so damaged or destroyed and to make up any deficiency out of the Lessee's own money PROVIDED ALWAYS that if the Lessee fails to effect and maintain any such insurance the Minister for Lands may from time to time at its discretion effect and keep on foot such insurance and the Lessee shall on demand repay to the Minister for Lands all sums of money expended by it for that purpose;
- (p) not to do or permit or suffer to be done in about or upon the leased premises any act or thing whereby any policy of insurance against loss or damage to the leased premises or any part of the leased premises may become void or voidable;
- (q) to effect and keep effected in respect of the leased premises adequate public risk insurance in an amount of not less than \$5,000,000 in respect of any one claim or such greater amount as the Minister for Lands at any time

and from time to time after notice to the Lessee may reasonably require with a reputable and substantial insurance office and whenever requested to notify the Minister for Lands of the details of the public risk insurance and to ensure that such insurance conforms with the reasonable requirements from time to time of the Minister for Lands of which the Lessee is given notice and —

- (i) if required by the Minister for Lands to produce the policy of insurance to the Minister for Lands;
 - (ii) to deliver to the Minister for Lands at any time upon the request of the Minister for Lands a valid certificate of currency in respect of such insurance policy issued by the insurance company with which the policy has been effected; and
 - (iii) not to alter the terms or conditions of that policy without the prior written approval of the Minister for Lands and to forthwith deliver to the Minister for Lands particulars of any change or variation of the terms and conditions or any other matter in respect of the insurance policy effected by the Lessee pursuant to this provision;
- (r) not to assign, sub-let, mortgage, charge or otherwise encumber or part with the possession of or dispose of the leased premises or any part of the leased premises or the benefit at law or in equity of this lease without the prior written consent of the Minister for Lands which consent shall not be unreasonably withheld —
- (i) in respect of a sublease of the leased premises or any part of the leased premises to a respectable responsible and solvent person;
 - (ii) if the Lessee wishes to assign the whole of the leased premises and the benefit of this lease, if —
 - (A) the proposed assignee is a respectable, responsible and solvent person who has purchased the freehold of the Morley Shopping Centre;

- (B) the Lessee procures the execution by the proposed assignee of a deed of assignment of this lease to which the Minister for Lands is a party in a form approved by the Minister for Lands' solicitors at the cost of the Lessee or the assignee in all respects;
 - (C) all rent then due and payable has been paid and there is no existing unremedied breach of any covenant to be performed by the Lessee under this lease;
 - (D) the assignment contains a covenant by the proposed assignee with the Minister for Lands that the proposed assignee shall at all times during the continuance of the Term duly perform and observe all the covenants in this lease on the part of the Lessee to be performed and observed; and
 - (E) the Lessee first pays to the Minister for Lands all proper and reasonable costs, charges and expenses incurred by the Minister for Lands of and incidental to any enquiries which may be made by or on behalf of the Minister for Lands as to the respectability, responsibility and solvency of any proposed assignee;
- (iii) in respect of a mortgage or charge over both the leased premises and the freehold of the Morley Shopping Centre if the Lessee first procures the other party to the transaction by deed to covenant with the Minister for Lands not to exercise any power conferred by or in respect of the mortgage or charge to sell the leased premises without first procuring the proposed purchaser by deed to agree to observe perform and be bound by all the covenants terms and conditions on the part of the Lessee as are contained in this lease.

The Lessee agrees that the covenants and agreements on the part of any proposed assignee sublessee mortgagee or chargee shall be deemed to be supplementary to the covenants of the Lessee under this lease and shall not in any way relieve or be deemed to relieve the Lessee from any of those covenants, and it is hereby expressly agreed and declared that the provisions of sections 80 and 82 of the *Property Law Act 1969* are excluded from and do not apply to this lease;

- (s) at all times during the Term except during any period during which any works are being undertaken on the leased premises to actively and continuously use the leased premises for the purpose of the Morley Redevelopment including (without limitation) parking and construction of a new building or other development ancillary to the Morley Shopping Centre and not to use the leased premises for any other purpose whatsoever;
- (t) the use to which the leased premises are put by the Lessee shall in all respects comply with all applicable provisions of the City's Town Planning Scheme and the Metropolitan Region Scheme;
- (u) to ensure that car parking on the leased premises is kept continuously available to the public free of cost for short term parking of vehicles, other than during periods when with the prior written approval of the Minister for Lands that car parking area or part of it may be closed for repairs or other reasonable purposes.
- (v)
 - (1) Subject to subclauses (v) (2) and (v) (3), the Lessee will maintain on the leased premises 80 short term car parking bays which will be available for use in common by the owner, tenants, employees, visitors and invitees of:
 - (A) the Morley Shopping Centre; and
 - (B) the Morley Markets;
 - (2) the obligation of the Lessee under subclause (v) (1) will cease on Morley Markets ceasing to be used for:
 - (A) a market retail business; or
 - (B) another retail purpose;
 - (3) The provisions of subclause (v) (2) will not apply during a period when:
 - (A) any buildings or other improvements on Morley Markets are in the course of

demolition for the purposes of the construction of new buildings or other improvements;

- (B) new buildings or other improvements are being constructed on Morley Markets;

and where, following the construction of new buildings or other improvements, Morley Markets are proposed to be used for, and are used for, the purposes specified in subclause (v) (2).

3. IT IS HEREBY AGREED AND DECLARED by and between Us, Our Heirs and Successors and the Minister for Lands, and the Lessee —

- (a) The Lessee will grant to the Metropolitan (Perth) Passenger Transport Trust (“Transperth”) a sub-lease in respect of part of the leased premises in accordance with the following provisions:
 - (1) The sub-lease will be granted in respect of that part of the leased premises as is agreed between the Lessee and Transperth, or failing agreement, then in respect of that part of the leased premises as is shown on the plan marked as Annexure B;
 - (2) The sub-lease will be granted for the purposes of Transperth constructing, maintaining and operating a transfer bus station as approved by the Lessee, such approval not to be unreasonably withheld, it being understood the transfer bus station will be single level and will not include any retail outlets or offices;
 - (3) Subject to the term being for a term which expires on a date prior to the date of expiration of this lease, the term of the sub-lease will be for the term required by Transperth;
 - (4) Subject to Transperth not being released from any obligations which arise prior to the date of surrender, Transperth will be entitled to surrender

the sub-lease on giving not less than 20 Business Days' notice in writing to the Lessee;

- (5) If Transperth ceases to use that part of the leased premises in respect of which a sub-lease is granted in accordance with this subclause, for the purpose of a transfer bus station or for a similar public transport purpose, the Lessee will be entitled to require Transperth to surrender the sub-lease unless Transperth establishes that Transperth will within a reasonable time re-commence use of the area the subject of the sub-lease for a public transport use;
 - (6) No rent will be payable by Transperth under the sub-lease;
 - (7) Transperth will be responsible at its own expense for constructing any bus station and associated facilities on the area sub-leased to Transperth, and will be responsible for all maintenance and repair in respect of those facilities and of the land area sub-leased generally;
 - (8) The Lessee will cause to be prepared and will execute a formal written sub-lease with Transperth incorporating the matters specified in this subclause and any other provisions as are appropriate to the sub-lease and as are agreed between the Lessee and Transperth, or failing agreement, determined by arbitration with each party having the right to be represented by a legal practitioner; and
 - (9) The sub-lease to Transperth will be subject to the approval of the Minister, which approval will not be unreasonably withheld;
- (b) all rights other than those expressly or impliedly granted under this lease are reserved to Us, Our Heirs and Successors and the Minister for Lands (as the case requires);
- (c) if —
- (i) the rent hereby reserved is unpaid for 28 days after becoming payable (whether formally demanded or not) and such default continues for a period of a

further 28 days after notice by the Minister for Lands to the Lessee specifying the non-payment complained of; or

- (ii) a petition is lodged or a resolution is passed for the winding up or dissolution of the Lessee, or a receiver or a receiver and manager of the affairs and undertaking of the Lessee or any part of the affairs and undertaking of the Lessee is appointed and that petition, resolution or appointment of a receiver or manager is not withdrawn or rescinded within 30 Business Days; or
- (iii) any process of execution is levied on any property of the Lessee and is not satisfied or withdrawn within 30 Business Days; or
- (iv) the Lessee defaults in the due and punctual performance or observance of any covenant on its part contained or implied in this lease and fails to remedy that default within a reasonable time after the service on the Lessee of a notice specifying such default, which reasonable time shall be specified in the notice and shall not be less than ten (10) Business Days after service of the notice;

THEN and in any of those cases it shall be lawful for Us, Our Heirs and Successors and the Minister for Lands (as the case requires) to re-enter into and upon the leased premises or any part of the leased premises in the name of the whole to have again repossess and enjoy the leased premises as if this lease had never been executed without making any compensation to the Lessee but without prejudice to any right of action of both or either of Us, Our Heirs and Successors and the Minister for Lands in respect of any breach of the Lessee's covenants contained in this lease;

- (d) any notice consent request approval or other writing authorized or required by this lease to be given or sent shall be deemed to have been duly given or sent by the Minister for Lands if signed by that Minister or by a senior officer of the Western Australian Public Service acting by the direction or with authority of that Minister and forwarded by prepaid certified mail to the Lessee at its registered office for the time being and by the Lessee if signed on its behalf by a person authorized to do so and

forwarded by prepaid certified mail to the Minister for Lands at its office in Perth AND any such notice consent request approval or writing shall be deemed to have been duly given or sent on the day on which it would be delivered in the ordinary course of post;

- (e) Notwithstanding clause 2 (c) hereof the Lessee and every person who is occupying the leased premises under a sub-lease, licence or other agreement with the Lessee will, other than in respect of lifts escalators airconditioning and fire prevention plant and equipment, be entitled to remove from the leased premises or from any improvements on the leased premises all fixtures, fittings, plant and equipment installed within the said improvements within one month after the date of expiration or sooner determination of the Term. Any fixtures, fittings, plant and equipment not removed as aforesaid will become the sole and absolute property of the Lessor and no compensation will be payable to the Lessee in consequence thereof. Where fixtures, fittings, plant and equipment are removed from the leased premises or any improvements thereon, any damage caused to the improvements or the leased premises by the removal will be made good by the Lessee at the expense of the Lessee.
- (f) any dispute or difference in respect of any matter or thing done or which ought to have been done by any party hereunder or concerning the interpretation hereof may be determined by arbitration under the *Commercial Arbitration Act 1985*. Either party may be represented by a legal practitioner or other representative at any such arbitration.
- (g) each party to this lease will pay its own legal costs of the preparation and execution of this lease.
- (h) Option to Purchase
 - (1) Subject to the provisions of subclause (i) and this subclause, the Lessor grants to the Lessee an option to purchase:
 - (A) Part Property; and
 - (B) the leased premises

(2) If the Lessee exercises the option to purchase and acquires Part Property, the Lessee will thereafter be entitled to exercise the option to purchase:

(A) any other Part Property; and

(B) the leased premises;

(3) Where the Lessee exercises the option to purchase, and acquires Part Property, all references thereafter in this subclause and in subclauses (k) and (m) and in the definition of "Option Premises" to the leased premises, are a reference to that part of the leased premises which remains after the acquisition of the Part Property by the Lessee;

(i) Option to Purchase Option Premises

(1) If the Lessee wishes to exercise the option to purchase the leased premises or Part Property, the following provisions of this subclause will apply;

(2) The Lessee must serve on the Lessor an Option Notice;

(3) The Option Notice must specify whether the option is exercised in respect of the leased premises or Part Property and if in respect of Part Property, must clearly specify the Part Property;

(4) the Option Notice referred to in subclause (i) (2) must be given at any time but not later than 6 months prior to the date of expiration of the Term;

(5) The purchase price of the Option Premises will be the purchase price determined subject to and in accordance with the provisions of subclause (j);

(6) Within 20 Business Days of the determination of the purchase price, the Lessee will pay to the Lessor the sum which represents the purchase price of the Option Premises;

(7) The Lessor will, immediately following payment of the purchase price under subclause (i) (6),

implement procedures for the issue to the Lessee of a Crown Grant in respect of the Option Premises;

(8) The Crown Grant in respect of the Option Premises will be issued;

(A) in the name of the Lessee, and if more than one person is the Lessee, then to each person who is the Lessee in the same undivided shares in which those persons then hold this Lease; and

(B) subject to the sub-lease granted to Transperth under clause 3 (a) and the exceptions, reservations and conditions usual in Crown Grants (except that the land will be granted to a depth of 30 metres), but otherwise free of encumbrances;

(9) If a Crown Grant is issued under this subclause the Lessee will continue to comply with the provisions of clause 2 (v) and will if requested by the City enter into a formal agreement to comply with those obligations.

(j) Purchase Price

(1) Subject to the provisions of this subclause, the purchase price will be the lesser of the following:

(A) the Market Value of the Option Premises as at the Option Exercise Date; and

(B) the Market Value of the Option Premises as at 1 September 1992 increased as from 1 September 1992 by the amount which is equal to 3.5 percentage points greater than the percentage increase in the CPI calculated from 1 September 1992 to the end of the CPI Quarter immediately preceding the Option Exercise Date.

(2) Subject to the provisions of subclauses (k) and (l), the Market Value of the Option Premises will be determined;

(A) as at 1 September 1992 — in accordance with subclause (k); and

(B) as at the Option Exercise Date — in accordance with the provisions of subclause (l).

(k) Determination of Market Value as at 1 September 1992

(1) At any time after the date of execution of this Lease either the Lessor or the Lessee may require that the Market Value of the leased premises be established as at 1 September 1992;

(2) Where the Lessor or the Lessee requires the Market Value of the leased premises to be determined as at 1 September 1992, the Lessor or the Lessee (as the case may be) must serve a notice on the other requiring the determination of the Market Value;

(3) Following the service of a notice in accordance with subclause (k) (2), the Lessor and the Lessee will meet with each other with the intention of agreement being made in writing as to the Market Value of the leased premises as at 1 September 1992;

(4) If the Lessor and the Lessee are unable to agree the Market Value of the leased premises within 30 Business Days of the service of a notice in accordance with subclause (m) (2), the Market Value of the leased premises as at 1 September 1992 will be determined in accordance with subclause (m);

(5) If the Lessee exercises the option in this clause in respect of Part Property and at the date of service of the Option Notice the Market Value of the leased premises as at 1 September 1992 has not been determined, then the Market Value of the Part Property as at 1 September 1992 will be determined subject to and in accordance with the procedure specified in subclauses (k) (1) to (k) (4)

inclusive and every reference in those subclauses to leased premises is to be treated as a reference to Part Property;

- (6) If the Lessee exercises the option under this clause in respect of Part Property, and at the date of service of the Option Notice the Market Value of the leased premises as at 1 September 1992 has been determined in accordance with the provisions and procedure specified in subclauses (k) (1) to (k) (4) inclusive then the Market Value of the Option Premises as at 1 September 1992 will be that proportion of the Market Value of the leased premises which the area of the Part Property bears to the area of the leased premises.

(l) Determination of Market Value as at Option Exercise Date

- (1) Following the service of an Option Notice in accordance with subclause (i), the Lessor and the Lessee will, within 30 Business Days of service of the Option Exercise Notice meet with each other with the intention of agreement being made in writing as to the Market Value of the Option Premises as at the Option Exercise Date;
- (2) If agreement in writing is made between the Lessor and the Lessee as to the Market Value of the Option Premises in accordance with the provisions of subclause (l) (1), then the Market Value of the Option Premises as at the Option Exercise Date will be the Market Value as agreed in writing between the Lessor and the Lessee in accordance with subclause (l) (1);
- (3) If the Lessor and the Lessee are unable within 30 Business Days of the service of the Option Notice to make an agreement in writing with regard to the Market Value of the Option Premises as at the Option Exercise Date, then the Market Value of the Option Premises as at the Option Exercise Date will be determined in accordance with subclause (m).

(m) Determination of Market Value in case of Dispute

- (1) Where the Lessor and the Lessee are unable to agree the Market Value of the leased premises or of the Option Premises in accordance with the provisions of subclauses (k) or (l) then the provisions of this subclause will apply;

- (2) The Market Value of the leased premises or the Option Premises as the case may be will be determined by arbitration under the *Commercial Arbitration Act 1985*;
- (3) The arbitrator who will conduct the arbitration will be a Qualified Valuer nominated by the President of the Institute of Valuers on the application of either the Lessor or the Lessee;
- (4) The decision of the arbitrator will be final and binding on the Lessor and the Lessee; and
- (5) For the purposes of the *Commercial Arbitration Act 1985*, both the Lessor and the Lessee may be represented in the arbitration proceedings by a qualified legal practitioner.

THE FIRST SCHEDULE

[Land description] as shown on the plan annexed and marked Annexure "A".

THE SECOND SCHEDULE

Portion of Swan Location Q1 and being Lot 200 on Plan 14988 being the whole of the land in Certificate of Title Volume 1690 Folio 946;

Portion of Swan Location Q1 and being Lot 204 on Plan 14988 being the whole of the land in Certificate of Title Volume 1690 Folio 950;

Portion of Swan Location Q1 and being Lot 205 on Plan 14988 being the whole of the land in Certificate of Title Volume 1690 Folio 951;

Portion of Swan Location Q1 and being Lot 206 on Plan 14988 being the whole of the land in Certificate of Title Volume 1690 Folio 952;

Portion of Swan Location Q1 and being Lot 207 on Plan 14988 being the whole of the land in Certificate of Title Volume 1690 Folio 953;

Portion of Swan Location Q1 and being Lot 208 on Plan 14988 being the whole of the land in Certificate of Title Volume 1690 Folio 954;

Portion of Swan Location Q1 and being Lot 209 on Plan 14988 being the whole of the land in Certificate of Title Volume 1690 Folio 955;

Portion of Swan Location Q1 and being Lot 1 the subject of Diagram 29399 being the whole of the land in Certificate of Title Volume 1278 Folio 955.

Portion of Swan Location T and being part of Lot 1152 on Plan 3401 being the whole of the land in Certificate of Title Volume 1863 Folio 210;

Portion of Swan Location T and being Lot 1123 on Plan 3401 being the whole of the land in Certificate of Title Volume 1848 Folio 251;

Portion of Swan Location T and being part of Lot 1122 on Plan 3401 being the whole of the land in Certificate of Title Volume 1642 Folio 958;

Portion of Swan Location T and being Lot 101 the subject of Diagram 39772 being the whole of the land in Certificate of Title Volume 523 Folio 173A;

Portion of Swan Location T and being Lot 50 the subject of Diagram 45128 being the whole of the land in Certificate of Title Volume 1354 Folio 259;

Portion of Swan Location T and being Lot 6 on Diagram 35665 being the whole of the land in Certificate of Title Volume 472 Folio 103A;

Portion of Swan Location T and being Lot 401 the subject of Diagram 45121 being the whole of the land in Certificate of Title Volume 1354 Folio 570;

Portion of Swan Location T and being Lot 498 on Diagram 63581 being the whole of the land in Certificate of Title Volume 1628 Folio 570;

Portion of Swan Location T and being Lot 2 on Diagram 39472 being the whole of the land in Certificate of Title Volume 1494 Folio 090;

Portion of Swan Location Q1 and being Lot 3 on Diagram 24053 being the whole of the land in Certificate of Title Volume 1227 Folio 014.

IN WITNESS WHEREOF this lease has been executed as a Deed the day of 19 .

THE COMMON SEAL of the
MINISTER FOR LANDS was hereunto
affixed by me: }

MINISTER FOR LANDS
For the time being in the presence of:

Witness

Signed for and on behalf of THE
COLONIAL MUTUAL LIFE
ASSURANCE SOCIETY LIMITED
by its Attorneys

_____ and

Pursuant to Power of Attorney
registered No. [] in the presence of:

Witness signs

Name (please print)

Address

Occupation

THE COMMON SEAL of MORLEY
SHOPPING CENTRE PTY LIMITED
was hereunto affixed in accordance with
its Articles of Association in the
presence of:

Secretary/Director

Name (please print)

THE COLONIAL
MUTUAL LIFE
ASSURANCE SOCIETY
LIMITED by its Attorneys

:

Director

(Name (please print))

REGISTERED the day of 199 in conformity with
Section 81C of the Transfer of Land Act 1893 and numbered .

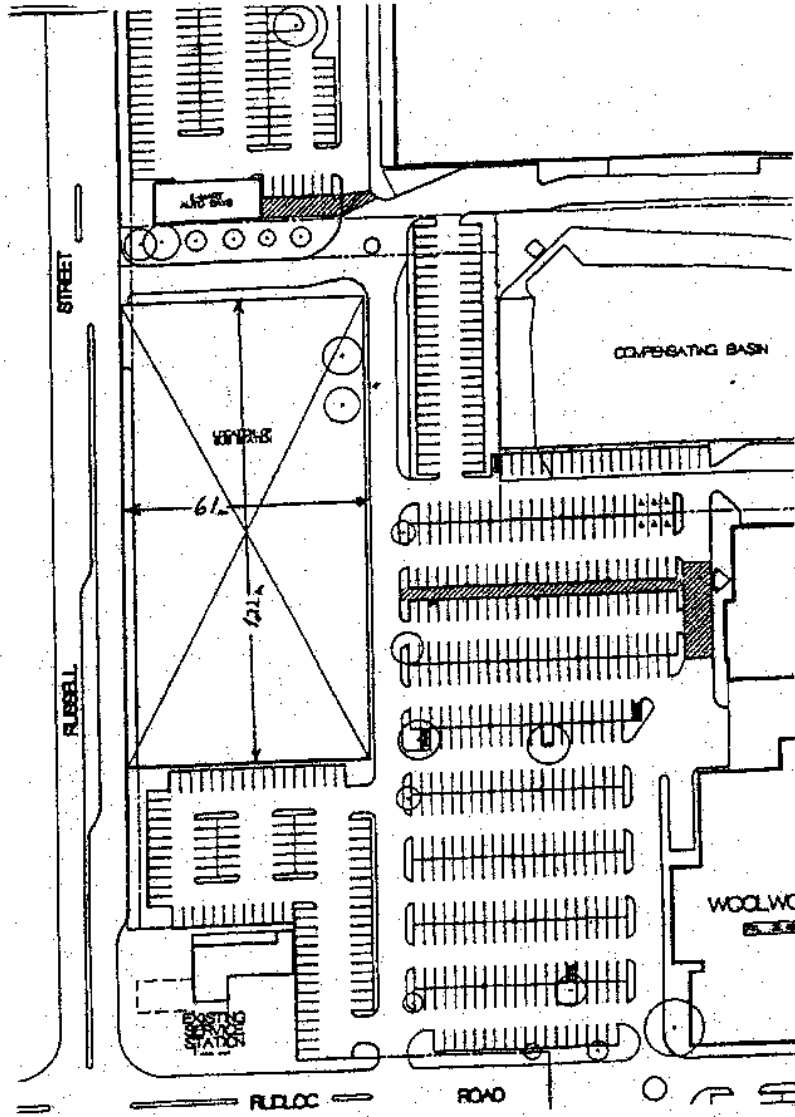
Registrar of Titles

ANNEXURE A

Plan of Lease Area

ANNEXURE B

Plan of Transperth Sub-lease area



SCHEDULE 6

LAND RIGHTS — WATER AUTHORITY LAND

Reference: clause 9

Part A — Easement over Water Authority Land

1. GRANT OF EASEMENT

Subject to clauses 2 to 4 inclusive of this Part, the Water Authority will grant to the Joint Venturers an easement over the Water Authority Land in accordance with clause 5 of this Part.

2. EASEMENT AREA AND PLAN

- (1) Subject to clause 3 of this Part, the easement will be granted over that part of the Water Authority Land which is capable of being used for motor vehicle traffic.
- (2) At a reasonable time prior to the time when the easement is required to be granted under clause 9 (a) of the Agreement, the Joint Venturers will prepare and deliver to the Water Authority a plan which shows the area of the Water Authority Land over which the easement is to be granted in accordance with subclause (1) of this Part. The area over which the easement is to be granted will be hatched on the plan.
- (3) The Water Authority will, within 20 Business Days of delivery of the plan in accordance with subclause (2) of this clause, give written notice to the Joint Venturers whether the plan complies or does not comply with subclause (1) of this clause.
- (4) If the Water Authority, in accordance with subclause (3) of this clause, gives notice to the Joint Venturers that the plan complies with subclause (1) of this clause, then that plan will be incorporated in

the formal easement deed specified in clause 5 of this Part.

- (5) (a) If the Water Authority, under subclause (3) of this clause, gives notice to the Joint Venturers that the plan does not comply with the provisions of subclause (1) of this clause, the Water Authority and the Joint Venturers will within 10 Business Days of the service of the notice by the Water Authority under subclause (3), meet with each other with the intention of reaching agreement in writing concerning the plan, or as to modifications to the plan.
 - (b) If the Joint Venturers and the Water Authority reach agreement in writing as referred to in subclause (5) (a) of this clause, then the plan agreed in writing will be the plan incorporated in the Deed of Easement specified in clause 5 of this Part.
 - (c) If there is no agreement in writing between the Joint Venturers and the Water Authority as to the plan in accordance with subclause (5) (b) of this clause, then the plan to be incorporated in the Deed of Easement referred to in clause 5 of this Part will be the plan determined by arbitration under subclause (6) of this clause.
- (6) If it is necessary to determine a dispute between the Joint Venturers and the Water Authority relating to the plan in accordance with subclause (5) (c) of this clause, the following provisions will apply.
- (a) The dispute will be determined by arbitration under the Commercial Arbitration Act 1985.
 - (b) The arbitrator, or arbitrators who will conduct the arbitration, will be agreed between the Water Authority and the Joint Venturers within 10 Business Days of the requirement for arbitration arising, or failing agreement, the arbitrator will be a person nominated by the President of the Law Society of Western

Australia (Inc.) on the application of either the Joint Venturers or the Water Authority.

- (c) The decision of the arbitrator will be final and binding on the Joint Venturers and the Water Authority.
- (d) For the purposes of the Commercial Arbitration Act 1985, both the Joint Venturers and the Water Authority may be represented in the arbitration proceedings by a qualified legal practitioner.
- (e) Both the Joint Venturers and the Water Authority will bear all legal costs and expenses incurred by them in relation to the arbitration.
- (f) Both the Water Authority and the Joint Venturers will each pay one-half of the costs of the arbitrator and other costs relating to the arbitration.

3. **PARKING DECK**

- (1) The parking deck constructed on the Water Authority Land will not be subject to the easement referred to in clause 1 of this Part.
- (2) The right of the Joint Venturers to use the parking deck will be subject to a separate agreement between the Joint Venturers and the Water Authority.

4. **PROVISIONS RELATING TO THE EASEMENT**

- (1) The Deed of Easement specified in clause 5 of this Part will:
 - (a) be prepared on the then appropriate form prescribed by the Office of Titles, Perth; and

- (b) will incorporate any modifications as are necessary to enable the Deed to be registered at the Office of Titles, Perth.
- (2) The Joint Venturers and the Water Authority will undertake all matters as are necessary to enable registration of the Deed of Easement at the Office of Titles and without affecting the generality of the preceding provisions, both the Water Authority and the Joint Venturers will:
 - (a) lodge all relevant Certificates of Title at the Office of Titles to enable registration of the Deed of Easement;
 - (b) execute and lodge all applications as are required by the Office of Titles; and
 - (c) co-operate with each other relating to the stamping and registration of the Deed of Easement at the Office of Titles.
- (3) The Joint Venturers will pay:
 - (a) all stamp duty assessed in respect of the Deed of Easement; and
 - (b) Office of Titles registration fees associated with the registration of the Deed of Easement.
- (4) The date of commencement of the term of the easement will be Project Completion or any earlier date as the Minister determines in accordance with clause 9 (a) of the Agreement.

5. **FORM OF DEED OF EASEMENT**

This Deed of Easement is made between:

WATER AUTHORITY OF WESTERN AUSTRALIA, a body corporate pursuant to the Water Authority Act 1984 of 629 Newcastle Street,

Leederville, Western Australia (the “Water Authority”); and

MORLEY SHOPPING CENTRE PTY LTD
(A.C.N. 002 154 458) of 800 Toorak Road,
Tooronga, Melbourne, Victoria and THE
COLONIAL MUTUAL LIFE ASSURANCE
SOCIETY LIMITED (A.C.N. 004 405 556) of 330
Collins Street, Melbourne, Victoria (the “Joint
Venturers”).

RECITALS

- A. The Water Authority is the registered proprietor of the Water Authority Land.
- B. The Joint Venturers are the registered proprietor of the Morley Shopping Centre Land.
- C. The Water Authority as the registered proprietor of the Water Authority Land has agreed to grant to the Joint Venturers as the registered proprietor of the Morley Shopping Centre Land, an easement and other rights in accordance with this Deed.

This Deed witnesses, and the Water Authority and the Joint Venturers covenant and agree with each other as follows.

1. **DEFINITIONS AND INTERPRETATION**

- (1) In this Deed, including the Recitals, unless the context otherwise requires, the following words and expressions have the following meanings.

“**Business Day**” means every day on which trading banks are open for business in Western Australia.

“**Date of Commencement**” means the [].

“Easement Area” means the area
which is hatched on the plan.

“Easement Term” means the term of
20 years commencing on the
Date of Commencement.

“Morley Shopping Centre” means
the shopping centre building and
other improvements erected on
the Morley Shopping Centre
Land.

“Morley Shopping Centre Land”
means:

Portion of Swan Location Q1
and being Lot 200 on Plan
14988 being the whole of the
land in Certificate of Title
Volume 1690 Folio 946;

Portion of Swan Location Q1
and being Lot 204 on Plan
14988 being the whole of the
land in Certificate of Title
Volume 1690 Folio 950;

Portion of Swan Location Q1
and being Lot 205 on Plan
14988 being the whole of the
land in Certificate of Title
Volume 1690 Folio 951;

Portion of Swan Location Q1
and being Lot 206 on Plan
14988 being the whole of the
land in Certificate of Title
Volume 1690 Folio 952;

Portion of Swan Location Q1
and being Lot 207 on Plan
14988 being the whole of the
land in Certificate of Title
Volume 1690 Folio 953;

Portion of Swan Location Q1
and being Lot 208 on Plan
14988 being the whole of the
land in Certificate of Title
Volume 1690 Folio 954;

Portion of Swan Location Q1
and being Lot 209 on Plan
14988 being the whole of the
land in Certificate of Title
Volume 1690 Folio 955;

Portion of Swan Location Q1
and being Lot 1 the subject of
Diagram 29399 being the whole
of the land in Certificate of Title
Volume 1278 Folio 955;

Portion of Swan Location T and
being part of Lot 1152 on Plan
3401 being the whole of the land
in Certificate of Title Volume
1863 Folio 210;

Portion of Swan Location T and
being Lot 1123 on Plan 3401
being the whole of the land in
Certificate of Title Volume 1848
Folio 251;

Portion of Swan Location T and
being part of Lot 1122 on Plan
3401 being the whole of the land
in Certificate of Title Volume
1642 Folio 958;

Portion of Swan Location T and
being Lot 101 the subject of
Diagram 39772 being the whole
of the land in Certificate of Title
Volume 523 Folio 173A;

Portion of Swan Location T and
being Lot 50 the subject of
Diagram 45128 being the whole

of the land in Certificate of Title
Volume 1354 Folio 259;

Portion of Swan Location T and
being Lot 6 on Diagram 35665
being the whole of the land in
Certificate of Title Volume 472
Folio 103A;

Portion of Swan Location T and
being Lot 401 the subject of
Diagram 45121 being the whole
of the land in Certificate of Title
Volume 1354 Folio 570;

Portion of Swan Location T and
being Lot 498 on Diagram
63581 being the whole of the
land in Certificate of Title
Volume 1628 Folio 570;

Portion of Swan Location T and
being Lot 2 on Diagram 39472
being the whole of the land in
Certificate of Title Volume 1494
Folio 090;

Portion of Swan Location Q1
and being Lot 3 on Diagram
24053 being the whole of the
land in Certificate of Title
Volume 1227 Folio 014.

“Paved Surface” means a surface
constructed of bitumen,
concrete, brick or other
appropriate material determined
by the Joint Venturers.

“Plan” means the plan annexed and
marked Annexure “A”.

“PS Works” means all works
necessary for the construction of
a Paved Surface.

“State” means the State of Western Australia.

“Titles Office” means the Office of Titles, Perth.

“Water Authority Land” means:

- (a) portion of Swan Location T and being part of the land on Diagram 27251 and being the whole of the land comprised in Certificate of Title Volume 280 Folio 77A; and
- (b) portion of Swan Location T and being part of Lot 1152 on Plan 3401 and being the whole of the land comprised in Certificate of Title Volume 1255 Folio 789.

“WAWA Equipment” means any plant or equipment including pipes of the Water Authority for the time being on or beneath the surface of the Water Authority Land.

(2) This Deed binds:

- (a) the Water Authority; and
- (b) the person who is from time to time the registered proprietor of the Water Authority Land and if:
- (c) after the Date of Commencement;

- (d) the Water Authority Land is transferred to another person,

then the references in this Deed to the Water Authority mean:

- (e) subject to any liability under clause 7 (2);
- (f) a reference to the person who from time to time is the registered proprietor of the Water Authority Land.

- (3) The benefit of the easement and other rights granted under this Deed is granted to

- (a) the Joint Venturers; and
- (b) the person who is from time to time the registered proprietor of the Morley Shopping Centre Land and if
- (c) after the Date of Commencement;
- (d) the Morley Shopping Centre Land is transferred to another person,

the references in this Deed to the Joint Venturers mean:

- (e) subject to any liability referred to in clause 7 (2);
- (f) a reference to the person who from time to time is the registered proprietor of the Morley Shopping Centre Land.

- (4) In this Deed:

- (a) A reference to an Act by name is a reference to an Act of the Parliament of the State;

- (b) an Act whether by name or otherwise includes the amendments to the Act for the time being in force and also any Act passed in substitution for it and the subsidiary legislation for the time being in force under it;
- (c) a reference to a clause is to a clause of this Deed;
- (d) a reference to a subclause is to a subclause of the clause in which the reference occurs;
- (e) the singular shall include the plural and *vice versa*;
- (f) clause headings will not be taken into account in interpreting this Deed; and
- (g) A reference to an institute, association, body and authority whether statutory or otherwise shall, if any institute, body association or authority ceases to exist or is reconstituted, renamed or replaced, or its powers or functions are transferred to any other institute, association, body or authority be treated as referring respectively to the institute, association, body or authority established or constituted in its place or as nearly as may be succeeds to the powers or functions of the institute, association, body or authority referred to.

2. **GRANT OF EASEMENT**

- (1) Subject to subclause (2) the Water Authority:
 - (a) as the registered proprietor of the Water Authority Land; and
 - (b) with the intention to bind the Water Authority Land and each person who is from time to time the registered proprietor of the Water Authority Land,

grants to the Joint Venturers:

- (a) as the registered proprietor of and as appurtenant to the Morley Shopping Centre Land;
- (b) with the intention that the benefit of the easement created by this Deed accrues to and in favour of each person who is from time to time the registered proprietor of the Morley Shopping Centre Land,

an easement for the Joint Venturers and the tenants, visitors, agents, employees, contractors and invitees of the Joint Venturers to cross over the Easement Area on foot or in vehicles at all times during the Easement Term.

- (2) Notwithstanding subclause (1) the Water Authority may when and as often as is necessary carry out any work, including excavation work, on the Easement Area for the purpose of maintaining, repairing, installing or modifying WAWA Equipment.

3. **RIGHTS TO CONSTRUCT PAVED SURFACE**

- (1) Subject to the provisions of this clause, the Joint Venturers will be entitled, at the expense of the Joint Venturers, to construct and maintain a Paved Surface on the Easement Area.
- (2) the Paved Surface will not be constructed on any part of the Easement Area where the Water Authority reasonably directs that the Paved Surface must not be constructed as a result of:
 - (a) WAWA Equipment; or
 - (b) for other reasonable cause.
- (3) Prior to preparing a specification of the PS Works, the Joint Ventures will:

- (a) consult with the Water Authority to determine whether there are any areas on which the Paved Surface should not be constructed in accordance with the requirements of subclause (2);
 - (b) with the intention of the Joint Venturers and the Water Authority resolving any matters in contention between them arising from a proposal by the Joint Venturers to construct a Paved Surface on the Easement Area.
- (4) A reasonable time prior to commencing the PS Works, and not less than 30 Business Days prior to the proposed date of commencement of the PS Works, the Joint Venturers will provide to the Water Authority in writing in reasonable detail:
 - (a) specifications for the PS Works including details as to where on the Easement Area the Paved Surface is to be constructed; and
 - (b) a timetable specifying in reasonable detail the times and manner in which the Joint Venturers intend to undertake the PS Works including in particular the proposed date of commencement of the PS Works.
- (5) The Water Authority will no later than 10 Business Days prior to the proposed date of commencement of the PS Works notify the Joint Venturers in writing:
 - (a) whether the Water Authority, having regard to the provisions of subclause (2), objects to any aspect of the PS Works; and if so
 - (b) the Water Authority will notify the Joint Venturers of its objections in that notice in reasonable detail.
- (6) If the Water Authority serves a notice on the Joint Venturers under subclause (5):
 - (a) the Joint Venturers will not commence the PS Works until all matters in dispute with the

Water Authority concerning the PS Works have been resolved; and

- (b) the Joint Venturers and the Water Authority will meet with each other within 10 Business Days of the service of the notice by the Water Authority under subclause (5) with the intention of agreement being reached in writing between the Water Authority and the Joint Venturers in respect of any matters in dispute concerning the PS Works.
- (7) If the Water Authority serves a notice on the Joint Venturers under subclause (5) and any matters in dispute concerning the PS Works are not resolved in accordance with the provisions of subclause (6) (b) within 10 Business Days of the service of the notice under subclause (5), then the matters in dispute will be determined by arbitration in accordance with clause 4.
- (8) If for the purpose of obtaining access to WAWA Equipment it is necessary for the Water Authority to demolish a part of the Paved Surface, the following provisions will apply.
- (a) The Water Authority will undertake all works necessary to reinstate the Paved Surface following the completion of the works by the Water Authority.
 - (b) The Joint Venturers will pay to the Water Authority the reasonable cost of reinstating the Paved Surface.
 - (c) If there is any dispute between the Water Authority and the Joint Venturers concerning the reasonable cost of the Water Authority in accordance with subclause (b), that dispute will be resolved by arbitration in accordance with clause 4.

4. **RESOLUTION OF DISPUTE UNDER
CLAUSE 3 BY ARBITRATION**

- (1) Where any dispute is required to be determined by arbitration in accordance with clause 3, the following provisions will apply.
- (2) The dispute will be determined by arbitration conducted in accordance with the *Commercial Arbitration Act 1985*.
- (3) The arbitrator will be one or more arbitrators agreed between the Water Authority and the Joint Venturers within 10 Business Days of the requirement for a dispute to be determined by arbitration, and failing agreement, will be determined by one arbitrator who is a civil engineer appointed by the President of the Institution of Engineers Australia (WA Division) on the application of either the Water Authority or the Joint Venturers.
- (4) The decision of the arbitrator will be final and binding on the Joint Venturers and the Water Authority.
- (5) The Water Authority and the Joint Venturers will be entitled to be represented by a qualified legal practitioner in any arbitration proceedings conducted in accordance with this clause.
- (6) The Joint Venturers and the Water Authority will each bear their own legal costs and expenses relating to the arbitration.
- (7) Both the Water Authority and the Joint Venturers will each share one-half of the costs of the arbitrator and other costs relating to the arbitration.

5. **INDEMNITY AND INSURANCE**

- (1) The Joint Venturers agree to indemnify and hold indemnified the Water Authority against any claim, action or proceedings in respect of damage to or destruction of property or injury or death of persons arising from:

- (a) the exercise by the Joint Venturers of the rights of the Joint Venturers under this Deed and in particular the rights under clauses 2 and 3; and
 - (b) any negligent act or omission which occurs on the Water Authority Land except to the extent caused or contributed to by the Water Authority.
- (2) The Joint Venturers will take out and maintain throughout the Easement Term insurance:
 - (a) with a reputable and substantial insurer;
 - (b) covering the liability of the Joint Venturers under subclause (1) and any other liability determined by the Joint Venturers in an amount of not less than \$5,000,000 in respect of any one claim.
- (3) The Joint Venturers will, on request by the Water Authority, provide to the Water Authority:
 - (a) a copy of every policy of insurance taken out and maintained by the Joint Venturers under subclause (2); and
 - (b) proof of payment of insurance premiums by the Joint Venturers.
- (4) If the Joint Venturers fail to take out and maintain insurance in accordance with subclause (2), the Water Authority may, after giving not less than 10 Business Days notice to the Joint Venturers in writing, take out and maintain insurance for the purposes of subclause (2) and recover from the Joint Venturers all costs and expenses incurred by the Water Authority in that regard.

6. **ANCILLIARY RIGHTS OF THE JOINT VENTURERS**

- (1) The rights granted to the Joint Venturers as the registered proprietors of the Morley Shopping Centre Land in accordance with clause 2 may also be exercised by the Joint Venturers in respect of any other land:
 - (a) of which the Joint Venturers are the registered proprietor; and
 - (b) which is adjacent to or reasonably adjacent to the Morley Shopping Centre Land and used by the Joint Venturers as part of the Morley Shopping Centre.
- (2) The Joint Venturers will:
 - (a) be entitled at all times to effect repairs and maintenance to any Paved Surface constructed on the Easement Area in accordance with clause 3; and
 - (b) from time to time to demolish and remove a Paved Surface constructed on the Easement Area by the Joint Venturers and to construct a new Paved Surface in its place.
- (3) If the Joint Venturers exercise the rights under subclause (2) (b) to demolish, remove and replace a Paved Surface, the provisions of clause 2 will apply in respect of any proposed new Paved Surface as if the proposed new Paved Surface were the first Paved Surface to be constructed on the Easement Area in accordance with the provisions of clause 3.
- (4) The Joint Venturers will be entitled to exercise all rights which are ancilliary to the Joint Venturers rights under this Deed including the right to enter on the Water Authority Land for the purpose of exercising the rights granted under clause 3 and under subclause (2).

7. **RELEASE OF PERSONAL OBLIGATIONS**

- (1) Subject to subclause (2), on the transfer by any party to this Deed of the land of which that party is the registered proprietor, that party is, as from the date of registration of the transfer, released from all personal obligations of that party under this Deed.
- (2) The release of a party under subclause (1) does not affect any claim against that party which arose prior to the date of the release specified in subclause (1).

8. **NOTICES**

- (1) Any notices required to be served on either party must be in writing and signed on behalf of that party by a person authorized to do so.
- (2) Any notice served under this Deed must be served:
 - (a) personally by hand delivery; or
 - (b) by certified mail

addressed to the relevant party at its address from time to time as registered on the Certificate of Title to the land of that party and recorded at the Titles Office.

- (3) Without affecting the provisions of subclause (2), any notice to the Water Authority must be served on the Water Authority at its address from time to time as recorded on the Certificate of Title to the Water Authority Land at the Titles office
- (4) Without affecting the provisions of subclause (2), any notice to the Joint Venturers must be served on the Joint Venturers at the address of the Joint Venturers as recorded from time to time on the Certificate of Title for the Morley Shopping Centre Land at the Titles Office.
- (5) Any notice served by certified mail in accordance with subclause (2) will be regarded as having been served on the fourth Business Day following the date of posting unless:

- (a) at the time of posting; or
- (b) within the next four Business Days, the services of Australia Post are suspended or interrupted by industrial action or other causes in which case a notice will be regarded as having been served four Business Days after normal services are resumed by Australia Post.

EXECUTED by the parties as a Deed the [] day of
[] 19[].

Part B — Option in Favour of the Joint Venturers to Purchase
the Water Authority Land

1. **DEFINITIONS AND INTERPRETATION**

- (1) In this Part, unless the context otherwise requires, the following words and expressions have the following meanings.

“Approved JVA Plan” means a JVA Plan which has been agreed or determined between the Water Authority and the Joint Venturers in accordance with the provisions of clause 12;

“Agreement” means the Morley Shopping Centre Redevelopment Agreement made between the State of Western Australia, Morley Shopping Centre Pty Limited and The Colonial Mutual Life Assurance Society Limited ratified by the *Morley Shopping Centre Redevelopment Agreement Act 1992*, in respect of which this Part is Part B of Schedule 6;

“Business Day” means a day on which trading banks are open for trading in the State;

“Contract” means the contract for the sale of the Water Authority Land from the Water Authority to the Joint Venturers arising from

the service by the Joint Venturers on the Water Authority of an Option Notice;

“CPI” means the Consumer Price Index compiled by the Australian Bureau of Statistics for Perth (Capital City) (All Groups) or any substitute therefor accepted by the Government of the Commonwealth of Australia from time to time provided that:

- (a) if the CPI Index Number base adopted by the Australian Statistician for the CPI Index Number is at any time updated the CPI Index Number is to be appropriately adjusted from time to time;
- (b) if at any time the Consumer Price Index is discontinued, there is to be substituted therefor the alternative method of computing changes in the cost of living which is mutually agreed in writing between the Water Authority and the Joint Venturers during the period of 20 Business Days after written notice given by either the Water Authority or the Joint Venturers to the other, or failing agreement, which is the opinion of an expert appointed by the President for the time being of the Institute of Chartered Accountants (Western Australian Division) at the request of the Water Authority or the Joint Venturers or both of them most closely reflects changes in the cost of living for the Perth Metropolitan Area (the costs of that expert being borne by the Water Authority and the Joint Venturers in equal shares); and
- (c) if any alternative index is determined in accordance with subclause (b) and that index is at any time thereafter discontinued, the reference to the CPI means from time to time the index determined subject to and in accordance with the provisions of subclause (b);

“CPI Index Number” means the Index Number compiled and issued by the Australian Bureau

of Statistics for the CPI for and in respect of a particular CPI Quarter;

“CPI Quarter” means the respective three monthly periods adopted by the Australian Bureau of Statistics for the compilation and issue of CPI;

“Commercial Arbitration Act” means the *Commercial Arbitration Act 1985* (WA);

“Drainage Facilities” means the sump, drainage pump station and associated equipment constructed on the Water Authority Land as at the date of this Agreement and which establishes a ground water control system;

“Encumbrance” means an agreement for lease, lease, easement, restrictive covenant, mortgage or charges;

“First Option Fee Review Date” means 31 December 1997;

“IOF Sum” means the sum of \$1,800,000.00.

“Institute of Valuers” means the Australian Institute of Valuers and Land Economists (INC.) (Western Australian Division);

“JV Option” means the option to purchase the Water Authority Land in accordance with the provisions of this Part;

“JVE Plan” means:

- (a) a detailed plan;
- (b) a detailed specification; and
- (c) having regard to the provisions of clause 12 (2), a detailed timetable,

for the WAWA Relocation Work;

“JV Engineer” means a civil engineer who has appropriate experience and expertise necessary to enable that person to undertake all professional services normally undertaken by an engineer for the purposes of the WAWA Relocation Work;

“Market Value” means the market value of the relevant land determined having regard to the following:

- (a) a willing, but not anxious, buyer and seller;
- (b) a reasonable period in which to market and then negotiate a sale of the relevant land, taking into account the nature of the land and the state of the market;
- (c) that the value of the land will remain static during the period referred to in subclause (b);
- (d) that the relevant land has been freely exposed to the open market;
- (e) that no account will be taken of any higher price that might be paid by an adjoining owner of the relevant land; and
- (f) that any improvement constructed on the relevant land is disregarded;

“Option Fee” means an amount equal to 7% of the Specified Amount;

“Option Fee Review Date” means the First Option Fee Review Date and thereafter the date which occurs at the expiry of each period of 3 years;

“Option Notice” means a notice in writing from the Joint Venturers to the Water Authority in

which the Joint Venturers give notice of the exercise of the JV Option;

“Option Term” means the period of 20 years commencing on 1 January 1993 and expiring on 31 December 2012;

“Outgoings” means Water Rates, Municipal Rates, land tax and metropolitan region improvement tax;

“Pipe Facilities” means the water, drainage and sewage pipes constructed within the Water Authority Land as at the date of the Agreement;

“Purchase Price” means the purchase price of the Water Authority Land as specified in clause 10 (3);

“Quarter” means each of the following periods of 3 months;

- (a) the period commencing on 1 January and ending on the next succeeding 31 March;
- (b) the period commencing on 1 April and expiring on the next succeeding 30 June;
- (c) the period commencing on 1 July and expiring on the next succeeding 30 September;
- (d) the period commencing on 1 October and expiring on the next succeeding 31 December;

“Qualified Valuer” means a person who:

- (a) is licensed as a valuer under the *Valuation of Land Act 1978* (WA);

- (b) is a member of the Institute of Valuers;
and
- (c) has not less than 5 years experience in
the valuation of suburban and regional
shopping centres.

“Russell Street Land” means the land situated in
Russell Street, Morley, of which the Water
Authority is the registered proprietor and
being:

- (a) Portion of Swan Location T and being
part of Lot 1141 on Plan 3401 and
being the whole of the land comprised
in Certificate of Title Volume 1924
Folio 482; and
- (b) Portion of Swan Location T and being
part of Lot 1142 on Plan 3401 and
being the whole of the land comprised
in Certificate of Title Volume 1924
Folio 483; and

“Settlement Date” means the Business Day which
is 25 Business Days after the SPC Date;

“Sewage Pump Facilities” means the sewage pump
station and associated equipment constructed
on the WAWA Land as at the date of the
Agreement;

“SPC Date” means the date on which the last of the
following occurs:

- (a) the determination of the Market Value
of the Russell Street Land in
accordance with clause 11; and
- (b) the Completion of the WAWA
Relocation Work in accordance with
clause 13;

“Specified Amount” means the amount specified in
clause 5;

“WAWA Facilities” means the water, sewage and drainage facilities established on the Water Authority Land and includes the Drainage Facilities, Sewage Pump Facilities and the Pipe Facilities;

“WAWA Relocation Work” means the work necessary for;

- (a) the relocation of the Drainage Facilities from the Water Authority Land to the Russell Street Land;
- (b) if necessary, the relocation of the Sewage Pump Facilities; and
- (c) if necessary, the relocation of the Pipe Facilities;

“Winter Period” means the period in each year commencing on 1 June and ending on 30 October;

- (2) (a) Unless otherwise defined in clause 1 (1), words and expressions which are defined in the Agreement have the same meanings in this Part.
 - (b) without affecting subclause (2) (a) every reference in this part to the Joint Venturers is a reference to the Joint Venturers and to any person to whom the interests of the Joint Venturers are assigned in accordance with clause 16 of the Agreement.
- (3) In this Part, unless otherwise expressly provided, a reference to:
- (a) an Act by name is a reference to an Act of Parliament of the State;
 - (b) an Act whether by name or otherwise includes the amendments to the Act for the time being in force and also any Act passed in

substitution therefor or in lieu thereof and the regulations for the time being in force thereunder;

- (c) a clause is to a clause of this Part;
- (d) a subclause is to a subclause of the clause in which the reference occurs;
- (e) the singular shall include the plural and *vice versa*;
- (f) clause headings will not be taken into account in interpreting this Part; and
- (g) A reference to an institute, association, body and authority whether statutory or otherwise shall, if any institute, body, association or authority ceases to exist or is reconstituted, renamed or replaced, or its powers or functions are transferred to any other institute, association, body or authority be treated as referring respectively to the institute, association, body or authority established or constituted in its place or as nearly as may be succeeds to the powers or functions of the institute, association, body or authority referred to.

2. **GRANT OF OPTION**

Subject to the provisions of this Part, the Joint Venturers are granted the JV Option.

3. **EXERCISE OF OPTION**

The JV Option may be exercised at any time during the Option Term by the Joint Venturers serving an Option Notice on the Water Authority.

4. **OPTION FEE**

- (1) The Joint Venturers will pay the Option Fee to the Water Authority in accordance with the provisions of this clause.
- (2) No Option Fee will be payable in respect of the Option Term prior to 1 January 1995.
- (3) Subject to the provisions of this Part, the Option Fee will be payable by the Joint Venturers to the Water Authority quarterly in advance, with the first quarterly payment of the Option Fee being due in respect of the Quarter commencing on 1 January 1995.

5. **SPECIFIED AMOUNT**

- (1) The Specified Amount will be the IOF Sum which sum will be subject to review and increase in accordance with the provisions of this clause.
- (2) Subject to subclause (3), on each Option Fee Review Date the Specified Amount will be increased by the amount which is equal to percentage increase in the CPI calculated from 1 January 1993 to each Option Fee Review Date, plus 3.5% per annum.
- (3)
 - (a) The Joint Venturers may by notice in writing to the Water Authority require that the Market Value of the Russell Street Land be established as at an Option Fee Review Date.
 - (b) If the Joint Venturers serve a notice on the Water Authority in accordance with subclause (3) (a), the Market Value of the Russell Street Land will be established as at the Relevant Option Review Date in accordance with the provisions of clause 9.
 - (c) If the Joint Venturers serve a notice in accordance with subclause (3) (a), the

Specified Amount will, as from the Relevant Option Fee Review Date be the lesser of:

- (i) the sum calculated in accordance with subclause (2); and
 - (ii) the Market Value of the Russell Street Land.
- (d) If:
- (i) the Joint Venturers serve a notice in accordance with subclause (3) (a); and
 - (ii) the Specified Amount has not been determined by the Relevant Option Fee Review Date in accordance with subclause (3) (c),

then, pending the determination of the Specified Amount in accordance with subclause (3) (c);

- (iii) the Joint Venturers will pay the Option Fee based on the Specified Amount which applies immediately prior to the Relevant Option Fee Review Date; and
- (iv) following the determination of the Specified Amount in accordance with subclause (3) (c) there will be an adjustment between the Water Authority and the Joint Venturers on the day when the next payment of the Option Fee is due by the Joint Venturers on the basis that the Joint Venturers will pay any shortfall in the Option Fee paid since the Relevant Option Fee Review Date and if the Option Fee has been overpaid by the Joint Venturers, the Water Authority will grant an appropriate credit to the Joint Venturers or, if so requested by the Joint Venturers, pay to the Joint Venturers the amount of the overpayment.

6. **CANCELLATION OF THE JV OPTION BY THE JOINT VENTURERS**

- (1) The Joint Venturers will be entitled at any time during the Option Term to cancel the JV Option by giving not less than 10 Business Days' notice in writing to the Water Authority prior to the end of a Quarter.
- (2) If the Joint Venturers give a notice in accordance with subclause (1), the JV Option will be cancelled as at the date of service on the Water Authority of the notice specified in subclause (1).
- (3) If the Joint Venturers serve a notice in accordance with subclause (1), the obligation of the Joint Venturers to pay the Option Fee will be cancelled with effect from the last day of the Quarter in which the notice is served.

7. **WAWA TO ISSUE INVOICES FOR OPTION FEE**

- (1) The Water Authority will not later than 15 Business Days prior to the Quarter commencing on 1 January 1995, and thereafter not later than 15 Business Days prior to the commencement of each succeeding Quarter during the Option Term, issue to each Joint Venturer a notice showing the amount payable by the Joint Venturers to the Water Authority on account of the Option Fee and specifying the due date for payment of the Option Fee.
- (2) The invoice referred to in subclause (1) will incorporate a notice to the Joint Venturers warning the Joint Venturers that if payment of the Option Fee is more than 6 months in arrears, the JV Option is liable to cancellation by the Water Authority.

8. **CANCELLATION OF JV OPTION ARISING FROM NON-PAYMENT OF OPTION FEES**

Subject to clauses 7 (1) and 7 (2), if the Joint Venturers are more than 6 months in arrears in payment of the Option Fee, the JV Option will, on notice in writing from the Water Authority to the Joint Venturers at any time after the expiry of the 6 month period when the Option Fee is in arrear, be cancelled.

9. **DETERMINATION OF MARKET VALUE**

- (1) Where it is necessary to determine the Market Value of land in accordance with this Part, the following provisions will apply.
- (2) The Joint Venturers and the Water Authority will meet with each other within 30 Business Days of the requirement arising for the Market Value to be determined with the intention that the Joint Venturers and the Water Authority will agree the Market Value in writing.
- (3) If the Joint Venturers and the Water Authority meet and agree the Market Value in writing in the manner specified in subclause (2), the Market Value of the land will be the amount agreed in writing between the Joint Venturers and the Water Authority.
- (4) If the Joint Venturers and the Water Authority do not meet or are unable to agree the Market Value in writing in accordance with subclause (2) within the period specified in subclause (2), the Market Value of the relevant land will be determined in accordance with the following provisions;
 - (a) the Market Value will be determined by arbitration under the Commercial Arbitration Act;
 - (b) the arbitrator or arbitrators who will conduct the arbitration will be agreed between the Water Authority and the Joint Venturers within 10 Business Days of the requirement for arbitration arising or failing agreement the arbitrator will be a Qualified Valuer nominated by the President of the Institute of

Valuers on the application of either the Joint Venturers or the Water Authority;

- (c) the decision of the arbitrator will be final and binding on the Joint Venturers and the Water Authority; and
- (d) for the purposes of the Commercial Arbitration Act, both the Joint Venturers and the Water Authority may be represented in the arbitration proceedings by a qualified legal practitioner;
- (e) each of the Water Authority and the Joint Venturers will pay their own legal and other costs in connection with the arbitration; and
- (f) the costs of the arbitrator, and all other costs relating to the arbitration itself, will be shared between the Water Authority and the Joint Venturers in equal shares.

10. **SALE OF WAWA LAND ON SERVICE OF OPTION NOTICE**

- (1) If the Joint Venturers serve on the Water Authority an Option Notice, the Water Authority will sell to the Joint Venturers and the Joint Venturers will purchase the Water Authority Land.
- (2) On the service of an Option Notice:
 - (a) subject to subclause (5) the obligation of the Joint Venturers to pay the Option Fee will cease;
 - (b) the Market Value of the Russell Street Land will be determined in accordance with clause 11; and
 - (c) The Joint Venturers will, at the cost of the Joint Venturers, undertake or cause to be

undertaken, the WAWA Relocation Work in accordance with clauses 12 and 13.

- (3) The Purchase Price of the Water Authority Land will be the lesser of the following:
 - (a) the IOF Sum increased by the amount which represents the percentage increase in the CPI calculated from 1 January 1993 to the end of the Quarter which immediately precedes the service of the Option Notice plus 3.5% per annum; and
 - (b) the Market Value of the Russell Street Land as at the date of service of the Option Notice.
- (4) Following the SPC Date, settlement of the sale of the WAWA Land from WAWA to the Joint Venturers will be effected on the Settlement Date in accordance with the provisions of clause 15.
- (5) If there is a delay in settlement of the purchase of the Russell Street Land of more than 5 months following the service of the Option Notice, the Joint Venturers will, on settlement under clause 15 pay to the Water Authority in addition to the Purchase Price the amount which represents the Option Fee from the expiry of the 5 month period until the settlement date.

11. **MARKET VALUE OF THE RUSSELL STREET LAND**

- (1) Within 30 Business Days of Service of the Option Notice, the Joint Venturers and WAWA will meet with the intention of reaching agreement in writing as to the Market Value of the Russell Street Land as at the date of service of the Option Notice.
- (2) If the Joint Venturers and the Water Authority reach agreement in writing as to the Market Value of the Russell Street Land within the period specified in subclause (1), the Market Value of the Russell Street Land will be the amount agreed in writing between the Joint Venturers and the Water Authority.

- (3) If the Joint Venturers and the Water Authority:
 - (a) do not meet as provided in subclause (1); or
 - (b) are unable to reach agreement in writing as to the Market Value of the Russell Street Land in accordance with subclause (2),

then the Market Value of the Russell Street Land will be determined in accordance with clause 9.

12. **WAWA RELOCATION WORK**

- (1) Subject to the provisions of this clause, the Joint Venturers will, as soon as practicable in the circumstances after the service of an Option Notice, undertake or cause to WAWA Relocation Work to be undertaken.
- (2) The WAWA Relocation Work must:
 - (a) not be undertaken during the Winter Period;
 - (b) be undertaken in a manner so that the services provided by the Water Authority in accordance with the WAWA Facilities will, as far as is practicable, not be affected by the WAWA Relocation Work;
 - (c) be undertaken on the basis that the WAWA Facilities will, following the WAWA Relocation Work, be re-established on the basis that the WAWA Facilities will be of the same standard and same specification as at the date of this Agreement; and
 - (d) be undertaken in a proper and workmanlike manner.
- (3) Within 20 Business Days of the service of an Option Notice by the Joint Venturers, the Joint Venturers will appoint the JV Engineer.

- (4) Within 30 Business Days of the service of the Option Notice, the Joint Venturers will cause the JV Engineer alone or with representatives of the Joint Venturers to meet with the Water Authority, and the Water Authority will meet with the JV Engineer and any representative of the Joint Venturers for the following purposes.
- (a) The provision by the Water Authority to the Joint Venturers of:
 - (i) the performance specification for the WAWA Facilities as at the date of this Agreement; and
 - (ii) detailed plans and specifications of the WAWA Facilities.
 - (b) Discussing whether the Sewage Pump Facilities will remain in their then present position on the Water Authority Land, or relocated to another area on the Water Authority Land or on the Development Area.
 - (c) Without affecting the provisions of subclause (b), if the Sewage Pump Facilities remain in their then present position on the Water Authority Land, it will be necessary that adequate access be provided in respect of the Sewage Pump Facilities to the Water Authority in any development constructed on the Water Authority Land after its acquisition by the Joint Venturers.
 - (d) Discussing whether the Pipe Facilities will remain in their then present position on the Water Authority Land or be relocated to another area on the Water Authority Land or on the Development Area.
 - (e) The criteria and requirements of the Water Authority for the WAWA Relocation Work and in that regard, the WAWA Relocation Work will be undertaken to the reasonable design requirement of the Water Authority.

- (5) If the Water Authority and the JV Engineer, with or without a representative of the Joint Venturers do not meet for the purposes as specified in subclause (4), or if a meeting takes place but not all the matters specified in subclause (4) are satisfactorily resolved, the Water Authority will, within 40 Business Days of the service of the Option Notice, produce the following to the Joint Venturers in writing —
- (a) The performance specification of the WAWA Facilities as at the date of this Agreement.
 - (b) Full plans and specifications of the WAWA Facilities.
 - (c) Subject to subclause (f) notification as to whether the Sewage Pump Facilities are to remain in their present position on the Water Authority Land, or are to be relocated to another area on the Water Authority Land or on the Development Area, and if the Sewage Pump Facilities are to be relocated to another area, then particulars of that area on the Water Authority Land or on the Development Area.
 - (d) Whether the Pipe Facilities are to remain in their present position on the Water Authority Land or to be relocated to another area on the Water Authority Land or on the Development Area and if the Water Authority requires the Pipe Facilities to be relocated to another area, then the area on the Water Authority Land or the Development Area to which the Pipe Facilities are to be relocated.
 - (e) The criteria and reasonable design requirements of the Water Authority for the WAWA Relocation Work.
 - (f) The Water Authority will make a determination as to whether the Sewage Pump Facilities are to remain in their present position or be relocated, having regard to the reasonable requirements of the Joint Venturers as notified by the Joint Venturers

to the Water Authority, but subject to the Water Authority being satisfied, if the Sewage Pump Facilities are required by the Joint Venturers to remain in their present position that the Water Authority will, after the transfer of the Water Authority Land to the Joint Venturers, be capable of continuing to provide the necessary services at the same level as at the date of exercise of the option.

(6) Within 45 Business Days of:

- (a) a meeting between the Water Authority and the JV Engineer (and with or without a representative of the Joint Venturers) in accordance with subclause (4); or
- (b) the delivery of the written information provided by the Water Authority to the Joint Venturers in accordance with subclause (5),

the Joint Venturers either personally or through the JV Engineer will deliver the JVE Plan to the Water Authority.

- (7) (a) Within 20 Business Days of the delivery of the JVE Plan in accordance with subclause (6), the Water Authority will notify the Joint Venturers whether in the opinion of the Water Authority the JVE Plan:
- (i) meets the requirements of this clause;
or
 - (ii) requires modification.
- (b) If the Water Authority notifies the Joint Venturers that in the opinion of the Water Authority the JVE Plan requires modification so as to comply with the requirements of this clause, the Water Authority will, when notifying the Joint Venturers under subclause (a), notify the Joint Venturers of the reasons for the opinion of the Water Authority and of the requirements of the Water Authority with regard to the JVE Plan.

- (c) If the Water Authority serves a notice on the Joint Venturers under subclause (a) (ii) and subclause (b), the Joint Venturers will, within 10 Business Days of service of the notice by the Water Authority meet with the Water Authority with a view to the Joint Venturers and the Water Authority reaching agreement in writing as to the JVE Plan.
- (d) If the provisions of subclause (a) apply and the Joint Venturers and the Water Authority reach agreement in writing concerning the JVE Plan, then the JVE Plan as so agreed will be the Approved JVE Plan in accordance with which the WAWA Relocation Work will be undertaken.
- (e) If:
 - (i) the provisions of subclause (c) apply; and
 - (ii) the Joint Venturers and the Water Authority are unable to agree the JVE Plan in accordance with subclause (d),

then any matters then in dispute relating to the JVE Plan will be determined by arbitration in accordance with the provisions of clause 14.

13. **WAWA RELOCATION WORK**

- (1) The Joint Venturers will, as soon as practicable after a JVE Plan has been agreed or determined in accordance with clause 12, cause the WAWA Relocating Work to be undertaken in accordance with the Approved JVE Plan and this clause.
- (2) The Joint Venturers will invite tenders for the undertaking of the WAWA Relocation Work and in that regard, the Joint Venturers will invite the Water Authority to tender for the purpose of undertaking the WAWA Relocation Work.

- (3) For the purposes of subclause (2), the Joint Venturers will provide to the Water Authority a copy of the tender documentation at the same time as the tender documentation is first provided to another person.
- (4) Following the completion of the tender process, the Joint Venturers will cause the WAWA Relocation Work to be commenced by the person determined by the Joint Venturers following completion of the tender process, in accordance with the Approved JVE Plan and thereafter completed.
- (5) If the WAWA Relocation Work is undertaken by a person other than the Water Authority, then the following provisions will apply.
 - (a) Insofar as the Joint Venturers are able to do so, the Joint Venturers will, on reasonable notice from the Water Authority, and at a reasonable time, grant access to the Water Authority to any place specified by the Water Authority where the WAWA Relocation Work is being undertaken to enable the Water Authority to inspect and review the progress of the WAWA Relocation Work.
 - (b) On completion of the WAWA Relocation Work, the Joint Venturers will give notice in writing to the Water Authority of the completion of the WAWA Relocation Work.
 - (c) If, following service of a notice by the Joint Venturers on the Water Authority under subclause (5) (b), there is a dispute as to whether the WAWA Relocation Work has been completed in accordance with the requirements of the Approved JVE Plan, then that dispute will be resolved by arbitration in accordance with clause 14.

14. **RESOLUTION OF DISPUTES CONCERNING MATTERS RELATING TO THE WAWA RELOCATION WORK**

- (1) Where any dispute is required to be determined by arbitration in accordance with clauses 12 and 13, the following provisions will apply.
- (2) The dispute will be determined by arbitration conducted in accordance with the Commercial Arbitration Act.
- (3) The arbitrator will be one or more arbitrators agreed between the Water Authority and the Joint Venturers within 10 Business Days of the requirement for a dispute to be determined by arbitration, and failing agreement, will be determined by one arbitrator who is a civil engineer appointed by the President of the Institution of Engineers Australia (WA Division) on the application of either the Water Authority or the Joint Venturers.
- (4) The decision of the arbitrator will be final and binding on the Joint Venturers and the Water Authority.
- (5) The Water Authority and the Joint Venturers will be entitled to be represented by a qualified legal practitioner in any arbitration proceedings conducted in accordance with this clause.
- (6) The Joint Venturers and the Water Authority will each bear their own legal costs and expenses relating to the arbitration.
- (7) The Water Authority and the Joint Venturers will each share one-half of the costs of the arbitrator and other costs relating to the arbitration.

15. **SETTLEMENT PROVISIONS**

- (1) Following the SPC Date, settlement of the sale of the Water Authority Land by the Water Authority to the Joint Venturers will be effected in accordance with the provisions of this clause.

- (2) The Water Authority Land will be sold and transferred from the Water Authority to the Joint Venturers free of all encumbrances other than:
 - (a) any reservation or condition contained in the Crown Grant of the Water Authority Land;
 - (b) the easement over the Water Authority Land granted by the Water Authority to the Joint Venturers as the proprietor of land within the Development Area; and
 - (c) any easement reasonably required by the Water Authority, which has been notified by the Water Authority to the Joint Venturers a reasonable time prior to the SPC Date and which easement is required by the Water Authority for the purpose of any Water Authority Facilities which will remain in the Water Authority Land after settlement. The terms of any easement under this subclause will be agreed between the Water Authority and the Joint Venturers not later than 10 Business Days prior to the SDC Date or failing agreement, will be the easement terms reasonably required by the Water Authority.
- (3) The Water Authority Land will be transferred to the Joint Venturers as tenants in common in the same proportions as the Joint Venturers are then the registered proprietors of the Development Area and if there is only one person who is then the registered proprietor of the Development Area, then to that person only.
- (4) A reasonable time prior to the Settlement Date, the Joint Venturers will prepare, execute and deliver to the Water Authority, for execution by the Water Authority prior to settlement, a registrable transfer of the Water Authority Land in favour of the Joint Venturers.
- (5) Settlement of the sale of the Water Authority Land will take place on the Settlement Date at the offices of the Joint Venturers' Solicitors in Perth or at any other place in Perth nominated by the Joint Venturers by notice in writing to the Water

Authority not less than 5 Business Days prior to the Settlement date. At settlement:

- (a) the Purchase Price will be paid by the Joint Venturers to the Water Authority by bank cheque made payable to the Water Authority or to any other person as the Water Authority nominates in writing to the Joint Venturers not later than 5 Business Days prior to the Settlement Date;
- (b) the Water Authority will deliver to the Joint Venturers:
 - (1) the duplicate Certificates of Title to the Water Authority Land; and
 - (2) the transfer of the Water Authority Land duly executed by the Water Authority.

If for any reason a bank cheque tendered as or towards the Purchase Price is not paid on presentation the Joint Venturers will remain liable to pay the amount payable under that bank cheque.

- (6) The Water Authority will grant vacant possession of the Water Authority Land to the Joint Venturers on settlement.
- (7) The Water Authority will pay all Outgoings up to the Settlement Date from which date they shall be payable by the Joint Venturers and will be apportioned if necessary. Any amount owing by one party to the other shall be paid or allowed on settlement.
- (8) The Joint Venturers will not be entitled to make or give Requisitions on Title to the Water Authority relating to the Water Authority Land.
- (9) (a) Notwithstanding any rule of law or equity to the contrary, the Water Authority Land shall be at the risk of the Water Authority until the whole of the Purchase Price is paid or the

Joint Venturers are entitled to or given possession of the Water Authority Land, whichever is the earliest and thereupon the risk shall pass to the Joint Venturers.

- (b) If the Water Authority Land includes a building or other improvement, any part of which is damaged or destroyed prior to the risk passing to the Joint Venturers, the Purchase Price shall not be affected.
- (10) Time is of the essence in respect of the Contract in all respects.
- (11) (a) Except as otherwise specifically provided in this clause neither the Water Authority nor the Joint Venturers will be entitled to terminate the Contract on the ground of the other's default in performing or observing an obligation imposed on that other party under the Contract, unless:
- (i) the party not in default first has given to the party in default (the "defaulting party") a written notice specifying the default complained of, which notice is to require that the default is remedied within the period stipulated in the notice; and
 - (ii) the defaulting party fails to remedy the default within the period stipulated in that notice.
- (b) The period stipulated in the written notice referred to in subclause (a) is not to be less than 10 Business Days.
- (c) The giving of a notice under this subclause does not prejudice the right of either party to give a further notice under this subclause.
- (d) This subclause is not to apply where either party repudiates the Contract.

- (12) (a) If the Joint Venturers default in performing or observing an obligation imposed on the Joint Venturers under the Contract and fail to remedy that default following a notice under subclause 11 (a) or if the Joint Venturers repudiate the Contract, then the Water Authority, in addition to the other rights or remedies which the Water Authority has under the Contract or otherwise, may:
- (i) affirm the Contract and sue the Joint Venturers for damages for breach;
 - (ii) affirm the Contract and sue the Joint Venturers for specific performance of the Contract and damages for breach in addition to, or in lieu of, specific performance of the Contract;
 - (iii) proceed to take or recover possession of the Water Authority Land; or
 - (iv) terminate the Contract and:
 - (A) sue the Joint Venturers for damages for breach; and
 - (B) without further notice to the Joint Venturers, re-sell the Water Authority Land in the manner which the Water Authority in good faith deems fit and if a deficiency arises from that re-sale and expenses have been incurred by the Water Authority that deficiency and those expenses are recoverable by the Water Authority from the Joint Venturers as liquidated damages.
- (b) If the Water Authority terminates the Contract and if the Water Authority re-sells the Water Authority Land the Water Authority may retain absolutely the surplus (if any) arising from the re-sale in excess of

the Purchase Price and expenses arising from the re-sale and all losses and expenses incurred by the Water Authority resulting from the Joint Venturers default.

- (13) If the Water Authority defaults in performing or observing an obligation imposed on the Water Authority under the Contract and the Water Authority fails to remedy that default following service of a notice under subclause 11 (a), or if the Water Authority repudiates the Contract, then in addition to other rights and remedies which the Joint Venturers have under the Contract or otherwise the Joint Venturers are entitled to the repayment of all moneys paid by the Joint Venturers under the Contract.
- (14) The rule of law known as the rule in Bain v. Fothergill whereby damages recoverable from a vendor incapable of making good title are limited is hereby excluded and does not apply to the sale of the WAWA land from the Water Authority to the Joint Venturers.
- (15) Each of the Joint Venturers and the Water Authority shall bear their own legal and other costs and expenses but the Joint Venturers will pay stamp duty on the transfer of the Water Authority land to the Joint Venturers. Any party in default shall pay all costs incurred by the other party in respect to the default and notices relating to that default.
- (16) The Water Authority will at the Water Authority's cost do all things necessary to enable a registrable transfer of the Water Authority Land to be accepted and registered by the Titles Office.

16. **NOTICES**

- (1) The provisions of clause 27 of the Agreement will apply in respect of Notices from the Water Authority to the Joint Venturers and from the Joint Venturers to the Water Authority.

- (2) For the purpose of subclause (1) and clause 27 of the Agreement the relevant particulars for the Water Authority are as follows:

Water Authority of Western Australia
629 Newcastle Street
LEEDERVILLE WA 6007

Facsimile:(09) 420 3173

17. **RESTRICTIONS ON THE WATER
AUTHORITY**

- (1) The Water Authority will not grant or create any Encumbrance over the Water Authority Land which is not capable of being withdrawn surrendered or terminated prior to the Settlement Date.
- (2) Subject to the provisions of subclauses (3) and (4) the Water Authority will not install any additional facilities in or on the Water Authority Land without the prior written approval of the Joint Venturers.
- (3) The provisions of subclause (2) do not apply in respect of the replacement of any Water Authority Facilities installed within the Water Authority Land as at the date of the Agreement.
- (4) If the Water Authority installs additional facilities in or on the Water Authority Land after the date of the Agreement without the approval of the Joint Venturers the cost of relocating those facilities will not form part of the WAWA Relocation Cost.
- (5) The provisions of this clause will apply:
- (a) During the Option Term, while the JV Option is current; and
- (b) If an Option Notice is served, then from the date of service of the Option Notice until settlement.

18. **TERMINATION OF LIABILITY ON CANCELLATION**

If the JV Option is cancelled by the Joint Venturers or by the Water Authority in accordance with the provisions of this Part then as from the date of cancellation, but subject to any claim which arose prior to the date of cancellation, the Joint Venturers and the Water Authority are released from all obligations under this Part as from the date of cancellation.

19. **JV ENGINEER — NOTICES AND COMMUNICATIONS**

- (1) Where, in accordance with clause 12, the Joint Venturers appoint the JV Engineer for the purpose of providing professional services in relation to the WAWA Relocation Work, the following provisions will apply.
- (2) The Joint Venturers will, as soon as practicable following the appointment of the JV Engineer give notice to the Water Authority of:
 - (a) the appointment of the JV Engineer; and
 - (b) the name, address and facsimile number of the JV Engineer;
- (3) Following notification from the Joint Venturers to the Water Authority under subclause (2), any notice or written communication required to be given under clauses 12 and 13;
 - (a) by the Joint Venturers to the Water Authority — may be given by the JV Engineer on behalf of the Joint Venturers; and
 - (b) any notice or communication required to be given by the Water Authority to the Joint Venturers — may be given by the Water Authority to the JV Engineer.

20. **CONSERVATION OF WATER**

The Joint Venturers will, insofar as it is reasonable, economical and practicable to do so, implement measures for the conservation of water within the Morley Shopping Centre.

SCHEDULE 7

**COLONIAL MUTUAL/COLES MYER GROUP
PROPOSED REDEVELOPMENT AT MORLEY CITY
SHOPPING CENTRE**

**SCHEDULE SHOWING CALCULATIONS AND
ASSUMPTIONS IN ESTIMATE OF STAMP DUTY**

Notes

1. The freehold land at Morley is presently owned by The Colonial Mutual Life Assurance Society Limited (“CML”), Coles Myer Limited (“Coles Myer”) and Myer Properties WA Limited (“MPWA”).
2. MPWA is a member of the Coles Myer Group and a subsidiary of Coles Myer.
3. The Coles Myer Group will be undertaking the redevelopment of the Morley Shopping Centre in joint venture with CML through its subsidiary Morley Shopping Centre Pty Ltd (“MSC”).
4. For the purposes of the Morley City Shopping Centre Redevelopment, there will be an equal joint venture between MSC as the Coles Myer Group company, and CML (the “Joint Venture”).
5. For the purposes of the redevelopment, it will be necessary for the following land transfers to take place.

- (a) Coles Myer to transfer a half share of the Coles Myer land to CML.
 - (b) Coles Myer to transfer a half share of the Coles Myer land to MSC.
 - (c) MPWA to transfer a half share of the MPWA land to CML.
 - (d) MPWA to transfer a half share of the MPWA land to MSC.
 - (e) CML to transfer a half share in the CML land to MSC.
6. On completion of the land transfers referred to in note 5, CML and MSC will own the Morley freehold land in equal undivided half shares each.
7. The Government has agreed to the following.
- (a) The issue of title to the Joint Venture in respect of the Johnsmith Street Road Reserve. The Joint Venture will pay \$200,000.00 to the Government in this regard.
 - (b) The grant of a 99 year lease at a nominal rental of \$100.00 per annum in respect of Reserve 40963 and the adjoining road reserve (the "Russell Street Reserve").

Under the Stamp Act, the issue of title in respect of the Johnsmith Street Road Reserve and in respect of the Russell Street Reserve, are both exempt from stamp duty in accordance with Item 2 (6) of the Third Schedule to the Stamp Act.

8. The Agreement with the Government (the "Government Agreement") will incorporate reference to the land transactions referred to in note 7. The Government Agreement will also incorporate reference to the other Agreements between the Government and the Joint Venture, including those limiting council and water rates and the refund of stamp duty, together with grants of

rights of carriageway and options of purchase. It has been assumed that only nominal duty will be assessed on the Government Agreement and in particular, that no duty will be assessed with regard to the land transactions referred to in note 7, for the reasons set out in note 7.

9. A Joint Venture Agreement will be entered into between CML and MSC concerning the redevelopment and the establishment of the Joint Venture. The Joint Venture Agreement will include reference to the land transfers mentioned in note 5. In addition, the Joint Venture Agreement includes the obligation of MSC to pay to CML the sum of \$15,500,000.00. The sum of \$15,500,000.00 represents an advance payment of purchase price by MSC to CML for the land referred to in Item 5. If the conditions necessary for the establishment of the Joint Venture are not satisfied CML is obliged to repay the \$15,500,000.00 to MSC. The payment of the \$15,500,000.00 represents in effect a payment similar to a deposit for the land transfer by CML to MSC under note 5 and the obligation by MSC to repay the sum of \$15,500,000.00 represents an obligation similar to an obligation to refund the deposit where a land sale transaction does not proceed. It is assumed that the State Taxation Department will treat these obligations as part of the sale transactions under note 5 and not subject to any other duty. It has been assumed that the Joint Venture Agreement will be assessed for nominal duty and that no duty will be assessed in respect of the land transfers referred to in note 5, as duty will be assessed separately in respect of those transactions. Coles Myer will be a party to the Joint Venture Agreement as guarantor, but it is assumed that as Coles Myer is a party to this Agreement, there will be no separate assessment in respect of the guarantee.
10. Under Section 75AF of the Stamp Act where transactions arise, from or substantially from one transaction or one series of transactions, those transactions are treated as one for the calculation of duty.
11. On the assumption that the State Taxation Department will accept that the purchase price

agreed to be paid on the land transfers referred to in note 5, are as set out below, and on the basis as set out above, it is calculated that total duty will be assessed in respect of the transactions necessary to establish the Joint Venture in the total sum of \$1,437,594.00, as below.

12. For the purpose of assessment of duty, no account has been made of copies of documents which are subject to duty at \$2.00 each. References below to item numbers are to item numbers in the Second Schedule to the Stamp Act.

<u>Document/ Transfer</u>	<u>Parties</u>	<u>Consideration/ Purchase Price (If applicable)</u>	<u>Item for Calculation of Duty</u>	<u>Duty</u>
Contract of Sale/Transfer	Coles Myer/CML	\$4,059,174.00	4	\$168,041.00
Contract of Sale/Transfer	Coles Myer/MSC	\$4,059,174.00	4	\$172,516.00
Contract of Sale/Transfer	MPWA/CML	\$2,584,376.00	4	\$109,837.00
Contract of Sale/Transfer	MPWA/MSC	\$2,584,376.00	4	\$109,837.00
Contract of Sale/Transfer	CML/MSC	\$20,643,550.00	4	\$877,353.00
Agreement	State of Western Australia, CML, MSC	Deed	8	\$5.00
Joint Venture Agreement	MSC, CML, Coles Myer	Deed	8	\$5.00
				\$1,437,594

EXECUTED by the parties.

Signed for and behalf of The State of
Western Australia by **THE**
HONOURABLE CARMEN
MARY LAWRENCE MLA
Premier in the presence of

}

CARMEN LAWRENCE

C.M. SHERVINGTON

Witness

197 St. George's Tce., Perth

Address

Public Servant
Occupation

THE COMMON SEAL of
MORLEY SHOPPING
CENTRE PTY LIMITED was
hereunto affixed in accordance
with its Articles of Association
in the presence of:

}

P.G. ALLARD

Director

Name (please print)

D.G. GRIEG

Director/Secretary

Name (please print)

THE COMMON SEAL of
**THE COLONIAL MUTUAL
LIFE ASSURANCE
SOCIETY LIMITED** was
hereunto affixed in accordance
with its Articles of Association
in the presence of:



D.S. ADAM

Director

Name (please print)

C.J. STOTT

Director/Secretary

Name (please print)