

CITY OF PERTH

and

TOWN OF VINCENT

and

MACEDONIAN COMMUNITY OF WA (INC)

DEED OF DISCHARGE AND RELEASE

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BETWEEN **CITY OF PERTH** of Westralia Square, 141 St George's Terrace, Perth,
Western Australia ('City')

AND **TOWN OF VINCENT** of 244 Vincent Street, Corner of Loftus Street,
Leederville, Western Australia ('Town')

AND **MACEDONIAN COMMUNITY OF WA (INC)**, C/- PO Box 12, North Perth,
Western Australia ('Community')

RECITALS

- A. The Community is the registered proprietor of the Land. The Community erected the Centre on the Land.
- B. At all relevant times until 1 July 1994 the Land was within the boundaries of the City. The Land is now within the boundaries of the Town as part of the division of the City under the CPR Act. Pursuant to the provisions of the CPR Act and the LGA, that division is taken to have been made by order of the Governor within the meaning of Section 2.1 of the LGA.
- C. The Town has issued the Community with a rectification order for immediate repairs to be undertaken to correct the Current Damage.
- D. The Community has claimed in the Claim Submissions that the City has a liability to compensate the Community for the cost of rectifying the Current Damage.
- E. The City has denied that it has any Current and Future Liabilities to the Community. References in this Deed to the City's Current and Future Liabilities are references to the City's Current and Future Liabilities to the extent that they exist at the date of this Deed or may exist at any time in the future.
- F. The City and the Town have negotiated under clause 11(2) of Schedule 2.1 of the LGA as to the transfer to the Town of all of the City's liability for Current Damage.
- G. As a result of those negotiations the City agrees to transfer to the Town and the Town agrees to accept a transfer of the City's liability for Current Damage subject to the terms of this Deed.
- H. It is a condition precedent to the operation and enforcement of any of the provisions of this Deed that the Minister give the Minister's Approval.
- I. The Community agrees to discharge and forever release the City from all Current and Future Liabilities and to indemnify the City in each case in the manner referred to in this Deed.
- J. The Community agrees to discharge and forever release the Town from all Current and Future Liabilities and to indemnify the Town in each case in the manner referred to in this Deed.
- K. The parties agree to enter into this Deed for the purpose of recording their agreement.

OPERATIVE PART

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Deed, unless the context clearly indicates otherwise, the following terms shall have the following meanings:

'Acts' includes all acts and statutes (State or Federal) for the time being enacted or modifying any Acts and all regulations by-laws requisitions or orders made under any Act from time to time by any statutory public or other competent authority;

'Centre' means the Macedonian Community Centre Building and the bitumen carpark and crossovers erected on the Land at the date of this Deed.

'Claim Submissions' means:

- (a) the letters from the Community to the City dated 24 February 1997 and 13 March 1997;
- (b) the letters from the Community's lawyer Andrew Lynn to the City dated 26 July 1996, 6 August 1996 and 2 October 1996; and
- (c) the oral submissions of representatives of the Community to a City Sub-Committee Meeting on 18 February 1997;

'COPPF Act' means the City of Perth Parking Facilities Act;

'CPR Act' means the City of Perth Restructuring Act 1993;

'Current Damage' means the damage to the Land and to the Centre referred to in Van der Meer's Report and alleged by the Community to be caused by subsidence of the Land;

'Current and Future Damage' means any or all of:

- (a) the Current Damage; and
- (b) any damage to either or both of the Land and the Centre whether existing at the date of this Deed or occurring at any time in the future as a result (either directly or indirectly) of any subsidence in the Land or any other land in the vicinity of the Land;

'Current and Future Liabilities' means all liabilities (actual or contingent) of any nature whether existing at the date of this Deed or arising at any time in the future to:

- (a) rectify any or all of the Current and Future Damage;
- (b) compensate the Community in any manner for any loss, damage or costs, arising directly or indirectly from the Current and Future Damage;

'Deed' means the deed between the Parties constituted by this document and includes the recitals and the schedule contained in this document;

'Land' means 51 Albert Street, North Perth and being more particularly described as Lot 192 on Diagram 56091 and being the whole of the land in Certificate of Title Volume 1545 Folio 398;

'LGA' means the Local Government Act 1995;

'Minister' means the Minister for Local Government and Disability Services;

'Minister's Approval' means a valid written approval given by the Minister to the City to pay the Sum to the Town pursuant to Section 7A(2) of the COPPF Act for the purpose of the Town then paying the Sum to the Community to be applied by the Community towards the cost of rectifying the Current Damage;

'Party' means a party to this Deed and 'Parties' has a corresponding meaning;

'Sum' means the sum of A\$1,296,610;

'Van der Meer's Report' means a report by Van der Meer & Associates commissioned by the Community dated the 13th day of February 1997.

1.2 Interpretation

In this Deed, unless the contrary intention appears:

- (a) a reference to this Deed or any other document includes:
 - (i) both express and implied terms, covenants and conditions of those documents; and
 - (ii) all variations, additions and deletions to the terms, covenants and conditions contained in those documents whenever effected;
- (b) a reference to a person includes a reference to the person's personal representatives, executors, administrators, successors and assigns and a reference to a corporation includes a reference to the corporation's successors and assigns;
- (c) a reference to any person if that person ceases to exist is reconstituted, renamed or replaced or its powers or functions are transferred to any other person, refers respectively to the person established or constituted in its place or succeeding to its powers or functions;
- (d) a reference to a person includes a reference to a corporation, firm, unincorporated association and a government or statutory body or authority;
- (e) an obligation, representation or warranty in favour of two or more persons is for the benefit of them jointly and severally;
- (f) an obligation, representation or warranty on the part of two or more persons binds them jointly and severally;
- (g) a reference to any thing includes the whole or any part of that thing and a reference to a group of things or persons includes each thing or person in that group;
- (h) a reference to a clause or the schedule is a reference to a clause in or the schedule to this Deed;
- (i) the index and all headings have been included for ease of reference only and they are not to be used to construe or interpret any part of this Deed; and

- (j) a reference to any statute includes a reference to all regulations made pursuant to that statute and all statutes amending or consolidating the statutes referred to.

2. MINISTER'S APPROVAL

The Parties mutually acknowledge and agree that it is a condition precedent to the operation and enforcement of the provisions of this Deed that:

- (a) the Minister issue the Minister's Approval; and
- (b) the Minister's Approval is not subject to any conditions (other than any conditions which each Party accepts by written notice to all other Parties).

3. THE COMMUNITY'S SUCCESSORS IN TITLE

3.1 The Community expressly acknowledges to the City and the Town that:

- (a) the Community enters into this Deed as registered proprietor of the Land; and
- (b) all of the provisions of this Deed which apply to the Community bind the registered proprietors of the Land from time to time as if references in this Deed to the Community were references to that registered proprietor.

3.2 Without limiting the generality of clause 3.1, the Community agrees with the City and the Town that the Community will not transfer or attempt to transfer the whole or any part of its freehold estate in the Land to any person (whether that transfer or attempted transfer is at law or in equity) unless the Community has first obtained the execution by the City, the Town, the Community and the proposed transferee of a deed (prepared by the City's solicitors at the cost of the Community and containing provisions reasonably required by the City and the Town) by which the proposed transferee agrees to become bound by this Deed as if it were referred to in this Deed as the Community.

3.3 The Community indemnifies the City and the Town and will keep the City and the Town indemnified from any loss, damages or costs arising directly or indirectly from any breach by the Community of the provisions of clause 3.2.

4. THE SUM

The City must pay the Sum to the Town within 5 working days after receipt by the City of the Minister's Approval.

5. TRANSFER OF THE CITY'S LIABILITY FOR CURRENT DAMAGE

Contemporaneously with the payment of the Sum by the City to the Town, the City will transfer to the Town and the Town will accept the transfer of the City's liability for Current Damage.

6. PAYMENT OF THE SUM TO THE COMMUNITY

6.1 On receipt of the Sum, subject to clause 6.2, the Town will hold the Sum on trust for the Community (in an interest bearing trust account) for use by the Community in payment towards the cost of rectifying the Current Damage in accordance with Van Der Meer's Report.

6.2 The Town may withdraw from the trust account from time to time:

- (a) the Town's reasonable charges and expenses of administering the trust account, paying the Sum to the Community, and making inspection and obtaining verification as referred to in the Schedule; and
- (b) the Town's legal costs in respect of this Deed including any stamp duty payable.

6.3 The Town agrees to pay the Sum (together with the interest earned on the Sum but less any amount withdrawn pursuant to clause 6.2 and less any taxes, duties and fees charged in respect of the trust account) to the Community by instalments in the manner set out in the Schedule.

7. APPLICATION OF THE SUM

7.1 Subject to clause 7.2, the Community must use the whole of the Sum for the purpose of rectifying the Current Damage in accordance with Van Der Meer's Report.

7.2 If the Community desires to rectify the Current Damage other than in accordance with Van Der Meer's Report then it may do so only with the prior written consent of the Town.

8. THE SUM AND ALL CURRENT AND FUTURE DAMAGE

The Community acknowledges to the City and the Town that to the extent that the Sum is insufficient to enable the Community to rectify the Current and Future Damage, the cost of rectifying the Current and Future Damage will be borne by the Community.

9. DISCHARGE AND RELEASE OF THE CITY AND INDEMNITY

From the date that the City's liability for Current Damage is transferred to the Town and the Sum is paid by the City to the Town, the Community:

- (a) forever discharges and releases the City from the Current and Future Liabilities;
- (b) indemnifies the City and will keep the City indemnified from:
 - (i) the Current and Future Liabilities;
 - (ii) all actions, suits, claims, proceedings and demands which may be brought by the Community or by third parties against the City whether at common law, in equity or pursuant to statute or otherwise in respect of the Current and Future Liabilities; and
 - (iii) all losses, costs and expenses incurred by the City in respect of any of the matters referred to in sub-paragraph (ii).

10. DISCHARGE AND RELEASE OF THE TOWN AND INDEMNITY

Without limiting the Town's obligations as Trustee of the Sum pursuant to this Deed, from the date of receipt of the Sum by the Town, the Community:

- (a) forever discharges and releases the Town from the Current and Future Liabilities;
- (b) indemnifies the Town and will keep the Town indemnified from:
 - (i) the Current and Future Liabilities; and

- (ii) all actions, suits, claims, proceedings and demands which may be brought by the Community, the City or by third parties against the Town whether at common law, in equity or pursuant to statute or otherwise in respect of the Current and Future Liabilities; and
- (iii) all losses, costs and expenses incurred by the Town in respect of any of the matters referred to in sub-paragraph (ii).

11. LIABILITY OF THE TOWN'S SERVANTS AND AGENTS

- 11.1 Every exemption from, and limitation of, liability, defence and immunity of whatever nature that applies to the Town, or to which the Town is entitled, including those set out in this Deed, shall also be available and extend to protect every one of its servants or agents acting under this Deed, or in any way connected with or relating to it.

12. BAR TO ACTION

This Deed may be pleaded as a bar to any action brought by:

- (a) the Community against the City in respect of any Current and Future Liabilities;
- (b) the Community against the Town in respect of any Current and Future Liabilities.

13. CHARGE AND CAVEAT

- 13.1 The Community charges the Land in favour of the City and the Town with the payment to the City and the Town of all money which is or may become payable by the Community to either or both of the City and the Town pursuant to the provisions of this Deed (including, without limitation, the indemnities the subject of clauses 3.3 and 9(b) and 10(b)). The charge granted to the City and the charge granted to the Town pursuant to this clause will at all times rank pari passu.
- 13.2 The Community acknowledges that each of the City and the Town may lodge and maintain a subject to claim caveat against the certificate of title to the Land in order to protect their respective interests as chargees of the Land. The Community must not do or cause or allow to be done anything which has the effect or may at any time in the future have the effect of removing from the register any of caveats registered by either or both of the City and the Town pursuant to this clause.

14. FURTHER ASSURANCES

Each Party must do, sign, execute and deliver and must procure that each of its employees and agents does, signs, executes and delivers all deeds, documents, instruments, and acts reasonably required of it or them by notice from another Party effectively to carry out and give full effect to this Deed and the rights and obligations of the Parties under it.

15. GOVERNING LAW

- 15.1 This Deed shall be governed by and be construed in accordance with the laws of Western Australia.
- 15.2 The Parties submit to the non-exclusive jurisdiction of the courts of Western Australia.

16. **GENERAL**

16.1 **Amendment**

No variation or waiver of, or any consent to any departure by a Party from, a provision of this Deed is of any force or effect unless it is confirmed in writing signed by all Parties and then that variation, waiver or consent is effectively only to the extent for which it is made or given.

16.2 **Waiver**

The failure, delay, relaxation or indulgence on the part of any Party in exercising any power or right conferred upon that party by this Deed does not operate as a waiver of that power or right, nor does any single exercise of any power or right preclude any other or further exercise of it or the exercise of any other power or right under this Deed.

16.3 **Entire Agreement**

This Deed constitutes the sole and entire agreement between the Parties and a warranty, representation, guarantee or other term or condition of any nature not contained or recorded in this Deed is of no force or effect.

17. **COSTS AND STAMP DUTY**

17.1 Each Party will bear its own costs and disbursements in respect of the negotiation for and preparation of this Deed and all copies of it.


17.2 The Town will pay stamp duty assessed on this Deed and all copies of it.

EXECUTED by the parties as a Deed.

THE COMMON SEAL of THE CITY OF)
PERTH was hereunto affixed in the)
presence of:



Lord Mayor



Chief Executive Officer

THE COMMON SEAL of THE TOWN OF)
VINCENT was hereunto affixed in the)
presence of:)

Mayor

Chief Executive Officer



THE COMMON SEAL of MACEDONIAN)
COMMUNITY OF WESTERN AUSTRALIA)
(INC) is hereunto affixed pursuant to the)
authority of a resolution of)

In the presence of: 22-10-97

S. Navrotes President

J. Lushinski Secretary



SCHEDULE A

Manner of Payment of the Sum

1. The Community must make written application to the Town for the payment of any portion of the Sum.
2. Each application by the Community must be accompanied by a copy of the progress claim made by the Community's builder or other relevant consultant in respect of the work undertaken by that builder or other relevant consultant in rectifying the Current Damage.
3. Before paying the amount the subject of the application the Town may require the Community to verify to the Town's reasonable satisfaction that the amount the subject of the application is fair and reasonable having regard to the work the subject of the application.
4. The Town will not incur any liability to the Community as a result of conducting the verification referred to in paragraph 3 and the Community alone must bear all responsibility for the suitability, quality and quantity of the work the subject of any application to the Town.