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FORM 13

**APPLICATION BY RESPONSIBLE AUTHORITY
FOR MAKING OF A RECORDING OF AN AGREEMENT**



Planning and Environment Act 1987

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Lodged at the Land Titles Office by:

Name: BEST HOOPER

Phone: 9670 8951

Address: 563 Little Lonsdale Street, Melbourne

Ref: DS:MF

Customer Code: 0485 U

The Authority having made an Agreement requires a recording to be made in the Register for the land.

Land: Certificates of Title Volume 10372 Folio 798

Authority: City of Port Phillip of 208 Banks Street, South Melbourne

Section and Act under which Agreement made:

Section 173 Planning and Environment Act 1987

A copy of the Agreement is attached to this Application.

Signature for the Authority:

Bruce Phillips

Name of Officer:

BRUCE PHILLIPS

Position Held:

MANAGER, PLANNING AND BUILDING

Dated:

13/3/2002 SERVICES



DAB152047S-1-8

15/3/02

Arnold Bloch Leibler

Lawyers and Advisers



DAB152047S-2-6

Metropol Pty Ltd
(A.B.N. 82 088 346 909)

and

City of Port Phillip

and

Lendmore Credit Pty Ltd
(A.C.N. 005 020 351)
First Mortgagee

Lendmore Credit Pty Ltd
(A.C.N. 005 020 351)
Second Mortgagee

Fourth Belliston Pty Ltd
(A.C.N. 006 892 066)
Third Mortgagee



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Australia & New Zealand Banking Group Limited
(A.C.N. 005 357 522)
Fourth Mortgagee

Section 173 Agreement

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Arnold Bloch Leibler
Ref: KMP1082871
::ODMA\PCDOCS\ABL\106833\1

THIS AGREEMENT is made on the 8th day of

March

2002

BETWEEN:

METROPOL PTY LTD (A.B.N. 82 083 346 909)
of Level 10, 650 Chapel Street, South Yarra,
Victoria, 3141 ("the Owner")

of the first part



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- and -

CITY OF PORT PHILLIP of Corner Carlisle Street
and Brighton Road, St Kilda, 3182 ("the Council")

of the second part

- and -

LENDMORE CREDIT PTY LTD
(A.C.N. 005 020 351) of Level 10, 650 Chapel
Street, South Yarra, Victoria, 3141 ("the first
Mortgagee") of the first part

LENDMORE CREDIT PTY LTD
(A.C.N. 005 020 351) of Level 10, 650 Chapel
Street, South Yarra, Victoria, 3141 ("the second
Mortgagee") of the second part

FOURTH BELLISTON PTY LTD
(A.C.N. 088 346 909) of c/- Minter Ellison of 525
Collins Street, Melbourne, Victoria, 3000 ("the third
Mortgagee") of the third part

AUSTRALIA & NEW ZEALAND BANKING GROUP
LIMITED (A.C.N. 005 357 522) c/- Corrs Chambers
Westgarth of 600 Bourke Street, Melbourne,
Victoria, 3000 ("the fourth Mortgagee") of the fourth
part

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RECITALS:

- A The Council is the Responsible Authority for the Planning Scheme under the Act.
- B The Owner is registered or entitled to be registered as the proprietor of an estate in fee simple in the Land and wishes to use the Land in accordance with the Permits.
- C The Council requires the Owner to enter into an Agreement with the Council under Section 173 of the Act.
- D This Agreement is made pursuant to Section 173 of the Act.
- E The Land is or is to be encumbered by the Mortgages.
- F By executing this Agreement, each of the first, second, third and fourth Mortgagee consents to the Owner entering into this Agreement.

THIS AGREEMENT WITNESSES:



1 DEFINITIONS AND INTERPRETATION

In this Agreement unless the contrary intention appears:

- 1.1 "Planning Scheme" means the Port Phillip Planning Scheme;
- 1.2 "the Act" means the Planning and Environment Act 1987;
- 1.3 "this Agreement" means this Agreement and any agreement executed by the parties and expressed to be supplemental to this Agreement;
- 1.4 "the Land" means each of Lots 71-98, 100-183 and 194 on Plan of Subdivision 432208Q being part of the land in Certificate of Title Volume 10372 Folio 798. A copy of the Plan of Subdivision is annexed to this Agreement as Schedule A;
- 1.5 "the Mortgages" means the following Mortgages:
- Mortgage No W431673M ("the first Mortgage")
- Mortgage No W431674J ("the second Mortgage")
- Mortgage No W922823F ("the third Mortgage")
- Mortgage No W922793F ("the fourth Mortgage");
- 1.6 "the Owner" means the person registered or entitled from time to time to be registered under the Transfer of Land Act 1958 as

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proprietor of an estate in fee simple in the Land or any part of it and includes a mortgagee in possession;

- 1.7 "the Permits" means Planning Permit No. 1178/1999 issued by the Council dated 13 October 1999 and Planning Permit No. 240/2000 dated 20 February 2002 copies of which are attached to this Agreement;
- 1.8 words importing the singular include the plural and vice versa and words importing any gender include all other genders;
- 1.9 a reference to any act of Parliament or section thereof or schedule thereto shall be read as if the words "or any statutory modification or re-enactment thereof or substitute therefore" were added to the reference;
- 1.10 the headings in this Agreement are for convenience only and do not affect the meaning or interpretation of this Agreement.

2 **OWNER'S OBLIGATIONS**



The Owner agrees that:

- 2.1 the Land shall not, either separately or with any other lots that comprise all of the Land as defined in this Agreement, be used for any purpose other than as a public car parking lot;
- 2.2 notwithstanding Clause 2.1 the Land may be leased or licensed if it is for the purpose of being used as part of a public car park operation;
- 2.3 the Owner consents to the registration of this Agreement by the Registrar of Titles under Section 181 of the Act;
- 2.4 the Owner will pay the Council's reasonable legal costs (on a solicitor/client basis) of and incidental to:
- 2.4.1 preparation of this Agreement; and
- 2.4.2 an application under Section 181 of the Act for registration of this Agreement by the Registrar of Titles
- and any registration fee payable to the Registrar of Titles in respect of the application.

3 **OBLIGATIONS TO RUN WITH THE LAND**

- 3.1 Each obligation imposed on the Owner under this Agreement takes effect as a covenant which is annexed to and runs at law and in equity with the Land and binds the Owner.

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- 3.2 The Council acknowledges that this Agreement satisfies the obligation of the Owner to use the Land only for the purpose of a public car parking lot.

4 MORTGAGEES' CONSENT

Each Mortgagee under the Mortgages consents to the Owner entering into this Agreement and agrees that in the event that the Mortgagee becomes mortgagee in possession the Mortgagee will be bound by the covenants and conditions of this Agreement.

5 GENERAL

Except as expressly provided in this Agreement, each party will bear its own costs of this Agreement and of incidental or ancillary matters.

6 NOTICES

- 6.1 Any notice, demand, consent or other communication (a *Notice*) given or made under this Agreement:

6.1.1 must be in writing and signed by a person duly authorised by the sender;

6.1.2 must either be delivered to the intended recipient by prepaid post (if posted to an address in another country, by airmail) or by hand or fax to the address or fax number below or the address or fax number last notified by the intended recipient to the sender:

6.1.2.1 to the Owner Metropol Pty Ltd:

Address: Level 10, 650 Chapel Street,
South Yarra, Victoria, 3141

Attention: Andrew Rettig
Fax No: 9827 0522;



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6.1.2.2 to City of Port Phillip:

Address: Corner Carlisle Street and
Brighton Road, St Kilda,
Victoria, 3182

Attention: Bruce Phillips
Fax No: 9536 2728;

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6.1.2.3 to the first Mortgagee: Lendmore Credit Pty Ltd

Address: Level 10, 650 Chapel Street,
South Yarra, Victoria, 3141

Attention: Andrew Rettig
Fax No: 9827 0522;

6.1.2.4 to the second Mortgagee: Lendmore Credit Pty Ltd

Address: Level 10, 650 Chapel Street,
South Yarra, Victoria, 3141

Attention: Andrew Rettig
Fax No: 9827 0522;

6.1.2.5 to the third Mortgagee: Fourth Belliston Pty Ltd

Address: C/- Minter Ellison, 525 Collins
Street, Melbourne, Victoria,
3000

Attention: Peter Nadalin
Fax No: 8608 1000;

6.1.2.6 to the fourth Mortgagee: Australia & New Zealand Banking Group Limited

Address: C/- Corrs Chambers
Westgarth, 600 Bourke
Street, Melbourne, Victoria,
3000

Attention: Randall Harvey
Fax No: 9602 5544;



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6.1.3 will be taken to be duly given or made:

6.1.3.1 if delivered by hand, when delivered;

6.1.3.2 if sent by post, two, or if posted from an
address in another country ten, business
days after the date of posting;

6.1.3.3 if sent by fax, on receipt by the sender of
a transmission control report from the
despatching machine showing the
relevant number of pages and the correct
destination fax machine number or name

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of recipient and indicating that the transmission has been made without error,

but if the result is that a Notice would be taken to be given or made on a day that is not a business day in the place to which the Notice is sent or is later than 4.00pm (local time) it will be taken to have been duly given or made at the commencement of business on the next business day in that place.

EXECUTED as a Deed.

THE COMMON SEAL of METROPOL
PTY LTD (A.B.N. 82 088 346 909) was
hereunto affixed in accordance with its
Constitution in the presence of:



Director

Name of Director
(Print)

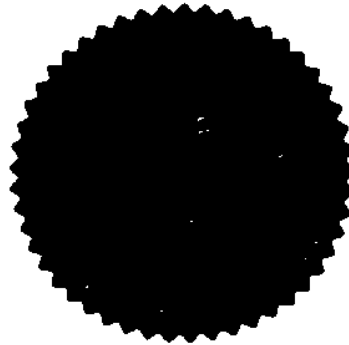
Director/Secretary

Name of Director/Secretary
(Print)

THE COMMON SEAL of THE CITY OF
PORT PHILLIP was affixed hereto in the
presence of:

Mayor General Manager Corporate

Chief Executive Officer



100/2001

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~~THE COMMON SEAL of FOURTH
BELLISTON PTY LTD~~

~~(A.C.N. 088 346 909) was hereto affixed in
accordance with its Constitution in the
presence of:~~

Director

Name of Director (Print)

Director/Secretary

Name of Director/Secretary (Print)

EXECUTED by AUSTRALIA AND NEW
ZEALAND BANKING GROUP LIMITED

(ACN 005 357 522) in VICTORIA
by being executed by its Attorney
appointed under Power of Attorney
dated 28/10/1998 in the presence of:

Witness

TIMOTHY JACKSON GILLARS.

(Print Name of Witness)

Attorney

ROBERT KRATACIC

(Print Name of Attorney)



DAB1520475-10-1

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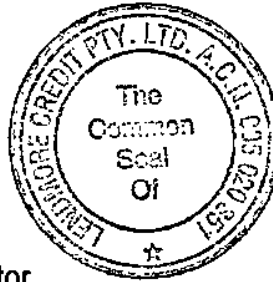
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THE COMMON SEAL of LENDMORE
CREDIT PTY LTD (A.C.N. 005 020 351)
was hereto affixed in accordance with its
Constitution in the presence of:



Director

Name of Director (Print)

Director/Secretary

Name of Director/Secretary (Print)

THE COMMON SEAL of FOURTH
BELLISTON PTY LTD
(A.C.N. 088 346 909) was hereto affixed in
accordance with its Constitution in the
presence of:



Director

Name of Director (Print)

Director/Secretary

Name of Director/Secretary (Print)

~~EXECUTED by AUSTRALIA AND NEW~~
~~ZEALAND BANKING GROUP LIMITED~~
~~(ACN 005 357 522) in~~
~~by being executed by its Attorney~~
~~appointed under Power of Attorney~~
~~dated in the presence of:~~



AB152047S-11-4

Witness

Attorney

(Print Name of Witness)

(Print Name of Attorney)

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SCHEDULE A



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