

THIS DEED is made on

4th day of January

2005

BETWEEN **THE CORPORATION OF THE CITY OF UNLEY** of 181 Unley Road, Unley SA 5061 ("**the Council**") of the one part

AND **KEVIN CHENEY** and **MARC ANDREW CHENEY** both of 280 Glen Osmond Road, Fullarton SA 5063 and **KEVIN CHENEY** of 16 Cranbrook Avenue, Magill SA 5072 ("**the Owner**")

RECITALS

- A. Land comprised in Certificate of Title Volume 5298 Folio 818 is owned by Kevin Cheney and known as 272 Glen Osmond Road, Fullarton ("**the Glen Osmond Road Land**") and land comprised in Certificate of Title Volume 5802 Folio 100 is owned by Kevin Cheney of 999 undivided 1000th parts and Marc Andrew Cheney of 1 undivided 1000th parts and known as 1A Wattle Street, Fullarton ("**the Wattle Street Land**").
- B. The Glen Osmond Road Land comprises the main administrative site and vehicle showroom of Cheney Dutton Volvo and Renault.
- C. The Wattle Street Land is comprised of a parking area.
- D. By development application No. 090/00762/98-DN ("**the development application**") the Owner made application to the Council for Provisional Development Plan Consent to redevelop the existing building on the Glen Osmond Road Land to provide for a first floor office together with an expansion of the administrative storage, reception and staff areas. The net addition in office floor space is 201.5 square metres.
- E. The Owner has constructed a parking area over the Wattle Street Land to provide carparking for the expanded office premises on the Glen Osmond Road Land. The Wattle Street Land will also provide additional carparking required generally for the operation of the Glen Osmond Road Land.
- F. The proposed office development on the Glen Osmond Road Land creates a deficiency of carparks on the Glen Osmond Road Land. In order to address this and the general deficiency in carparking on the Glen Osmond Road Land the Owner has developed the carpark on the Wattle Street Land to accommodate additional parking requirements primarily for staff and not vehicle display.
- G. The Council wishes to ensure that the Glen Osmond Road Land is only used for the purposes of the approved development so long as the Owner makes development application for and has available to it additional carparking spaces on the Wattle Street Land or such other land as the Council may approve for use by persons associated with the Glen Osmond Land.
- H. The Owner has agreed with the Council to enter into this Deed subject to the terms and conditions that follow.

THIS DEED WITNESSES as follows:

1. Interpretation

- 1.1 The parties acknowledge and agree that the matters set out in Recitals A to H inclusive are true and accurate and agree that they shall form part of the terms of this Deed.
- 1.2 In the interpretation of this Deed unless the context shall otherwise require or admit:
 - (a) words and phrases used in this Deed which are defined in the Development Act shall unless otherwise defined by the provisions of this Deed have the meaning ascribed to them by the Development Act;
 - (b) references to a statute or subordinate legislation or to the Development Plan shall include all statutes, subordinate legislation and development plans amending, consolidating or replacing the statute or subordinate legislation or development plan referred to;
 - (c) the term the Owner where the Owner is a company includes its successors, assigns and transferees and where the Owner is a person includes his or her heirs, executors, administrators and transferees and where the Owner consists of more than one person or company the term includes each and every one or more of such persons or companies jointly and each of them severally and their respective successors, assigns, heirs, executors, administrators and transferees of the companies or persons being registered as the proprietor of an estate in fee simple in the Glen Osmond Road Land and the Wattle Street Land subject however to such encumbrances, liens and interests as are registered and notified by memoranda endorsed on the Certificates of Title;
 - (d) the term the "development application" shall mean development application No. 090/00762/98-DN made by or on behalf of the Owner to the City of Unley on 21 December 1998.
 - (e) the term "person" shall include a corporate body;
 - (f) the term "the Glen Osmond Road Land" shall include any part or parts of the Glen Osmond Road Land;
 - (g) the term "the Wattle Street Land" shall include any part or parts of the Wattle Street Land;
 - (h) words importing the singular number or plural number shall be deemed to include the plural number and the singular number respectively;
 - (i) words importing any gender shall include every gender; and
 - (j) any clause headings or marginal notes are for reference purposes only and shall not be resorted to in the interpretation of this Deed.

- 1.3 If any provision of this Deed shall be found by a Court of competent jurisdiction to be invalid or enforceable in law then in such case the parties hereby request and direct such Court to sever such provision from this Deed.
- 1.4 The law governing the interpretation and implementation of the provisions of this Deed shall be the law of South Australia.

2. The Obligations of the Owner

- 2.1 The Owner shall not cause, suffer or permit the Glen Osmond Road Land to be used for the purposes of the approved development unless there are 9 carparking spaces on the Wattle Street Land available for use primarily by staff associated with that aspect of the operation of the business on the Glen Osmond Road Land created by the development application and not for vehicle display. The Owner agrees that the Wattle Street Land shall remain wholly as an operative carpark.
- 2.2 If, for whatever reason there are not 9 carparking spaces available on the Wattle Street Land for use by staff associated with that aspect of the operation of the business on the Glen Osmond Road Land created by the development application the Owner shall not cause suffer or permit the Glen Osmond Road Land to be used for the purposes of the approved development unless it is able to provide alternative carparking for 9 vehicles (or a lesser number that is acceptable to the Council) on other land that, subject to clause 2.3 of this Deed, is approved in writing by the Council. In the event that the Council accepts a lesser number of carparking spaces than 9 and/or approves the use of other land for use by the staff associated with the Glen Osmond Road Land, then that matter or those matters shall be noted against the Certificates of Title for the Glen Osmond Road Land by way of a Deed of Variation of this Deed and in accordance with the provisions of section 57(5) of the Development Act.
- 2.3 If carparking is to be provided on other land and that carparking requires Provisional Development Plan Consent and the Owner obtains Provisional Development Plan Consent for such carparking that Provisional Development Plan Consent shall be deemed to amount to the written approval referred to in clause 2.2 of this Deed.
- 2.4 In the event that the Council accepts that a lesser number of carparking spaces than 9 are required for use by persons associated with the Glen Osmond Land and approves the use of other land for carparking by persons associated with that aspect of the operation of the business on the Glen Osmond Road Land created by the development application then subject to clause 6.2 of this Deed that matter or those matters shall be noted against the Certificate of Title for the Glen Osmond Road Land by way of a Deed of Variation of this Deed and in accordance with the provisions of section 57(5) of the Development Act.

3. Right of Entry

The Council and any employee or agent of the Council authorised by the Council may at any reasonable time enter the Glen Osmond Road Land or the Wattle Street Land for the purposes of inspection and exercise of any powers of the Council under this Deed or under any related law.

4. **Operation of this Deed**

The parties expressly declare and agree that the provisions of this Deed shall not be binding or impose any obligation upon them unless and until all of the consents necessary for the approved development in relation to the development application have been obtained under the Development Act and are operative within the meaning ascribed to the phrase, the operative date, by Regulation 48(4) of the Development Regulations, 1993.

5. **Dispute Resolution**

5.1 The parties to this Deed mutually acknowledge, covenant and agree that if any dispute or difference shall arise between any or all of the parties in respect of any matter or thing to be undertaken by any party or any decision to be made by any party to this Deed then any one of the parties shall be entitled to give to the other parties written notice of the dispute or difference and at the expiration of fourteen (14) days from the date of receipt of such notice unless such dispute shall have been otherwise settled between the parties the dispute or difference shall be referred to a person to be agreed by the parties, who is experienced and knowledgeable in respect of the matter or matters in dispute, who will investigate and determine the dispute in the capacity of an expert not an arbitrator, or in the absence of agreement, to a person nominated by the president or other principal office bearer for the time being of the Royal Australian Planning Institute Incorporated (SA Division) ("**RAPI**") or in the event of that body ceasing to exist, by the president or other principal office bearer for the time being of another body by whatever name called and having the same general purposes and functions as RAPI.

5.2 If the person referred to in clause 5.1 of this Deed is unable to make a decision within two (2) weeks of the completion of the hearing or any extended period agreed in writing between the parties then another person shall be appointed in the manner prescribed in clause 5.1 of this Deed and shall continue on with the reference in lieu of the first person.

5.3 The decision of the person referred to in clauses 5.1 and 5.2 shall be final and binding upon the parties.

5.4 The fees of the person referred to in clause 5.1 and 5.2 of this Deed together with all other costs and expenses of and incidental to the decision (other than the parties own costs which includes legal costs) shall be borne equally by the parties to the dispute.

6. **Recision**

6.1 Subject to clause 6.2 of this Deed if sufficient alternative carparking is provided on other land in accordance with the provisions of clause 2.2 of this Deed, the Council agrees to rescind this Deed at the request of the Owner and the reasonable costs of and incidental to the preparation, stamping and registration of the Deed of Recision shall be borne by the Owner.

6.2 The parties agree that if this Deed is to be rescinded due to the provision of alternative carparking that satisfies the requirements of clause 2.2 of this Deed that alternative

carparking shall be completed and fully operational to the reasonable satisfaction of the Council prior to the lodgment of the Deed of Recision at the Lands Titles Office.

7. Miscellaneous Provisions

- 7.1 This Deed may not be varied except by a supplementary Deed signed by the Council and the Owner.
- 7.2 The Council may waive compliance by the Owner with the whole or any part of the obligations on the part of the Owner provided that no such waiver shall be effective unless expressed in writing and signed by the Council.
- 7.3 This Deed contains the whole agreement between the parties in respect of the matters referred to.
- 7.4 Notice for the purposes of this Deed shall be properly served on the Owner if it is in writing and signed for and on behalf of the Council and either delivered by hand or sent by post or sent by facsimile transmission to the Owner to the last known address of the Owner. Such notice shall be deemed to have been given at the time of such delivery or upon the date five (5) days after such posting.
- 7.5 Notice for the purposes of this Deed shall be without prejudice to any other means of giving notice be properly served on the Council if it is posted, sent by facsimile transmission or delivered to the principal office of the Council and such notice shall be deemed to have been given at the time of such delivery or upon the date five (5) days after such posting.
- 7.6 The Council may delegate any of its powers under this Deed to any person.
- 7.7 The requirements of this Deed are at all times to be construed as additional to the requirements of the Act and any other legislation affecting the Glen Osmond Road Land and the Wattle Street Land.
- 7.8 The Owner shall bear its own costs and expenses and the costs and expenses of the Council of and incidental to the negotiation and preparation of this Deed and the implementation of its terms. The Owner shall pay all stamp duty and registration fees associated with the Deed.
- 7.9 Each party shall do and execute all such Acts, documents and things as shall be necessary to ensure that this Deed is noted against the Certificates of Title for the Glen Osmond Road Land and the Wattle Street Land under the provisions of section 57(5) of the Development Act.

EXECUTED as a Deed.

THE COMMON SEAL of THE)
CORPORATION OF THE CITY OF)
UNLEY is affixed in the presence of:)



.....
Mayor

.....
City Manager

SIGNED SEALED AND DELIVERED)
by **KEVIN CHENEY** in the presence of:)

.....
~~Witness~~

X
KC

WITNESS :

[Signature]

SIGNED SEALED AND DELIVERED)
by **MARC ANDREW CHENEY** in the)
presence of:)

X
~~Witness~~

X
m/c

WITNESS :

[Signature]

The Shell Company of Australia and being a party with a legal interest in the land comprised in Certificate of Title Volume 5298 Folio 818 vide Encumbrance No 7985546 hereby consents to this agreement:

The
[Execution for Shell Company of
Australia]

EXECUTED by THE SHELL COMPANY OF AUSTRALIA LIMITED (ABN 46 004 610 459) by its authorised Attorney under a Power of Attorney
Dated 1 October 2003
Registration Number 9705344
who declares that he/she has no notice of revocation of the said Power of Attorney.

Signature of Attorney

Name of Attorney

Signature of Witness

DIANNE GAIL WHITESIDE
Name of Witness

11 BURNBY CROSS
LEEMING 6149
ASSET ADMINISTRATOR

Westpac Banking Corporation being a party with a legal interest in the land comprised in Certificate of Title Volume 5298 Folio 818 vide Mortgage No 8044246 and Certificate of Title Volume 5802 Volume 100 vide Mortgage No 8273621 hereby consents to this agreement:

[Execution of Westpac Banking Corporation]

Signed in my presence by
Scott Kellett Supervisor

of
who is either personally known to me or has satisfied me as to his/her identity, as attorney(s) for Westpac Banking Corporation

FULL NAME:
ADDRESS:
BUSINESS Ph No.:

Anna Kovacevic
360 Collins Street
Melbourne Vic 3009
Tel: 03) 8600 2545

BANK OFFICER,
Westpac Banking Corporation

WESTPAC BANKING CORPORATION
ABN 33 007 457 181
by its attorney(s)

Power of Attorney No. 7737412A

360 Collins Street
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