

CITY OF FREMANTLE

and

[REDACTED]
[REDACTED]

**HERITAGE AGREEMENT
52 HENRY STREET, FREMANTLE
FREMANTLE TOWN LOT 92**

CORRS CHAMBERS WESTGARTH
150 St George's Terrace
Perth Western Australia 6000
AUSTRALIA
Telephone (09) 321 8531
Facsimile (09) 322 6953
DX 126 PERTH
Ref: AFG
FREM0610-216
afgd/pa3171

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THIS DEED is made on *the 27th day of August*

1996

BETWEEN CITY OF FREMANTLE of 8 William Street, Fremantle, Western Australia
("Municipality")

AND

[REDACTED]

("Owner")

RECITALS

- A The Land is a registered place pursuant to the Act.
- B By the Contract the Municipality sold the Land to the Owner subject, inter alia, to the Condition.
- C The Owner is or is entitled to be the registered proprietor of the Land.
- D Pursuant to Section 29 of the Act the Municipality has the power to enter into this Agreement, with the Owner on behalf of the Crown, in order to bind the Land or of affecting its use so as to protect the cultural heritage characteristics of the Land.
- E The Municipality and the Owner have agreed to enter into this Agreement upon the terms and conditions set out below in order that the Owner may comply with the Condition.

OPERATIVE PROVISIONS

1 INTERPRETATION

1.1 Definitions

In this document:

"Act" means the Heritage of Western Australia Act 1990;

"Business Day" means any day which is not a Saturday, Sunday or a Public Holiday in Western Australia;

"Condition" means a condition requiring the Owner to execute a Deed of Agreement with the Municipality containing restrictive covenants to protect the cultural heritage significance of the Land;

"Contract" means the Tender for the purchase of the Land dated 22 December 1992 and made between the Municipality and the Owner;

“**Council**” means the Heritage Council of Western Australia established pursuant to Section 5 of the Act;

“**Land**” means Fremantle Town Lot 92 and being the whole of the land in Certificate of Title Volume 1200 Folio 361 and includes any part thereof;

“**Works**” means the works of restoration set out in the Schedule to this document.

1.2 Construction

Unless expressed to the contrary:

- (a) words importing:
 - (i) the singular include the plural and vice versa;
 - (ii) any gender include the other genders;
- (b) if a word or phrase is defined cognate words and phrases have corresponding definitions;
- (c) a reference to:
 - (i) a person includes a firm, unincorporated association, corporation and a government or statutory body or authority;
 - (ii) a person includes its legal personal representatives, successors and assigns;
 - (iii) a statute, ordinance, code or other law includes regulations and other statutory instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
 - (iv) a right includes a benefit, remedy, discretion, authority or power;
 - (v) an obligation includes a warranty or representation and a reference to a failure to observe or perform an obligation includes breach of warranty or representation;
 - (vi) provisions or terms of this document or another document, agreement, understanding or arrangement include a reference to both express and implied provisions and terms;
 - (vii) time is to local time in Perth;
 - (viii) “\$” or “dollars” is a reference to the lawful currency of Australia;
 - (ix) this or any other document includes the document as varied or replaced and notwithstanding any change in the identity of the parties;

- (x) writing includes any mode of representing or reproducing words in tangible and permanently visible form, and includes facsimile transmissions;
- (xi) any thing (including, without limitation, any amount) is a reference to the whole or any part of it and a reference to a group of things or persons is a reference to any one or more of them.

1.3 Headings

Headings do not affect the interpretation of this document.

2 OWNER'S COVENANTS

The Owner HEREBY COVENANTS with the Municipality:

- (a) not to use the Land or any buildings or other improvements on the Land for any use which, in the reasonable opinion of the Municipality or the Council is incompatible with the cultural and heritage significance of the Land or any buildings or other improvements on the Land in terms of public access, heritage interpretation and the impact of the proposed use on the significant fabric of the Land or any buildings or improvements on the Land;
- (b) to restore the structure of the original building erected on the Land maintaining its current form by executing or procuring the execution of the Works using, in the reasonable opinion of the Municipality, only those materials and conservation methods as are appropriate and to commence such restoration by not later than thirty (30) days after settlement of the Contract and thereafter to diligently complete such restoration to the reasonable satisfaction of the Municipality;
- (c) to ensure that any new building or improvement on the Land are small scale and are sympathetic in form and design to the original building on the Land and which maintain the prominence and setting of the original building;
- (d) to keep the building, walls, fences and other improvements now standing or being on the Land in good repair and condition having regard to their condition when restored in accordance with sub-clause (b) and to carry out all maintenance and repairs necessary for such purposes in a proper and workmanlike manner to the reasonable satisfaction of the Municipality and in accordance with plans and specifications and using workmen approved by the Municipality which approval will not be unreasonably withheld;
- (e) to submit to the Municipality for its approval which approval will not be unreasonably withheld a professionally prepared conservation plan prior to the submission to the Municipality of any redevelopment proposal affecting the Land or any buildings or improvements on the Land; and
- (f) to permit at any time after having been given reasonable notice by the Municipality or the Council, persons authorised by the Municipality or the Council to enter the Land to view the state of repair and restoration thereof.

MUTUAL AGREEMENT

The Municipality and the Owner AGREE that the covenants on the part of the Owner contained in clause 2 are, and are intended to be, covenants pursuant to Section 29(10) of the Act, to the intent that the covenants run with the Land and will pass to and are binding on and are enforceable against or by the parties hereto and their respective successors in title, and will take effect accordingly.

TERM

This document comes into effect on its execution and will be of permanent effect.

DEFAULT

5.1 Municipality may Carry out Works on Default

If the Owner defaults in the performance of or compliance with a provision of this document the Municipality shall give to the Owner a written notice specifying the default. The Municipality shall specify in the notice the period which it reasonably regards as adequate for the remedy of the default.

If the Owner fails within 30 days of receipt of such written notice to proceed and thereafter continue with all reasonable diligence to remedy the default and in any event if the default is not remedied within 3 months after the date of receipt of such written notice then the Municipality may (without prejudice to any other rights or remedies) exercise any one or more of the following rights and remedies:

- (a) the Municipality may carry out or complete any works which in the reasonable opinion of the Municipality are necessary to remedy the default;
- (b) the Municipality may employ and pay other persons whether in the employment of the Owner or not to carry out and complete any works which in the reasonable opinion of the Municipality are necessary to remedy the default and do all acts and things reasonably necessary for the carrying out and completion of those works;
- (c) the Owner shall if reasonably required by the Municipality assign to the Municipality without payment the benefit of any agreement for the supply of materials and/or for the execution of any work in respect of which default has been made;
- (d) the Municipality may pay the hirer of any plant or equipment to the Owner or any supplier or sub-contractor for any plant or equipment used or materials delivered or work executed in respect of carrying out and completing any works which in their reasonable opinion of the Municipality are necessary to remedy the default in so far as the charge or price therefore has not already been paid by the Owner;

- (e) for any of the above purposes, the Municipality may by its employees agents contractors or other persons referred to in paragraph (b) with or without motor vehicles engines machinery and plant enter upon the Land.

5.2 Costs and Expenses

The Owner shall upon demand pay to the Municipality all reasonable and proper costs and expenses paid or incurred by the Municipality by reason of any default made by the Owner hereunder and the exercise or attempted exercise by the Municipality of any of its powers or remedies which have properly arisen hereunder in respect thereof.

5.3 Interest

Any moneys due and owing by the Owner to the Municipality hereunder shall carry interest computed from and including the date of demand for payment to and including the date of payment computed at the rate from time to time charged by the Municipality's bankers on overdrafts of a similar amount.

6 COSTS

The Owner and the Municipality shall each pay half of the costs of and incidental to the preparation and execution of this document and the Owner shall pay the costs of stamping this document and all stamp duties payable hereon.

7 NOTICES

7.1 General

A notice, demand, certification, process or other communication relating to this document shall be written in English and may be given by an agent of the sender.

7.2 Method of Service

In addition to any lawful means, a communication may be given by:

- (a) being personally served on a party;
- (b) being left at the party's current address for service;
- (c) being sent to the party's current address for service by pre-paid ordinary mail or, if the address is outside Australia, by pre-paid air mail; or
- (d) facsimile to the party's current number for service.

7.3 Particulars for Service

(a) The particulars for service of each party are those set out below:

Municipality - to its address as specified in this document

Owner - to their address as specified in this document

(b) Each party may change from time to time its particulars for service by notice to each other party.

8 MISCELLANEOUS

8.1 Waiver and Exercise of Rights

(a) A single or partial exercise or waiver of a right relating to this document will not prevent any other exercise of that right or the exercise of any other right.

(b) A party will not be liable for any loss, cost or expense of any other party caused or contributed to by the waiver, exercise, attempted exercise, failure to exercise or delay in the exercise of a right.

8.2 Rights Cumulative

Subject to any express provision in this document to the contrary, the rights of a party under this document are cumulative and are in addition to any other rights of that party.

8.3 Approvals and Consent

Subject to any express provision of this document to the contrary, a party may conditionally or unconditionally give or withhold any approval or consent to be given under this document and is not obliged to give its reasons for doing so.

8.4 Further Assurance

Each party shall promptly execute all documents and do all things that any other party from time to time reasonably requires of it to effect, perfect or complete the provisions of this document and any transaction contemplated by it.

8.5 Computation of Time

Where time is to be reckoned by reference to a day or event, that day or the day of that event shall be excluded.

8.6 Governing Law and Jurisdiction

- (a) This document is governed by and is to be construed in accordance with the laws in force in Western Australia.
- (b) Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Western Australia and any courts which have jurisdiction to hear appeals from any of those courts and waives any right to object to any proceedings being brought in those courts.

8.7 Joint and Several Liability

An obligation of two or more persons binds them jointly and severally.

**SCHEDULE - RESTORATION WORKS
52 HENRY STREET FREMANTLE**

1. Replace surround of first window on northern side (white ant damage).
2. Repair to other windows as required - smooth, fill and paint sills, prepare window cords, repair broken timber.
3. Replace guttering and downpipes to southern side.
4. Check all drainage and, if necessary, install soak wells.
5. Stone and brick restoration:

Internal Walls

(i) Southern Side

Remove, render up to 3.5 metres in height and approximately 8 metres in width, remove loose bits, hose down dust and apply limewash to bind particles and allow wall to "breathe". Remove lining in office.

(ii) Northern Side

As southern side above.

External Walls

(i) Repair fretted stonework at north-east corner area, approximately 1 metre in height and five metres in width.

(ii) Northern Side

Repair base approximately 1.1 metre in height, chip off render repair stonework, repoint with lime based mortar matching finish above.

(iii) Doorway North Wall

Replace lintel with appropriate sized timber lintel, repair brickwork above.

6. Removal of windows to toilet area on north wall and replacement with stone in-fill to match existing stone.
7. Removal of stone from last window on northern wall and replacement with sash and iron bars to match existing windows.

- 8. Removal of concrete floor and replacement with timber floor.
- 9. Restoration of facade.
- 10. Detailed plans for development of the interior of the building to be submitted for Municipality's approval within a reasonable period of the date of execution of this document.
- 11. Work in relation to items 1 to 5 referred to above is to commence within thirty (30) days after settlement of the Land.
- 12. Work in relation to item 6 referred to above is to commence within thirty (30) days after 1 September 1995.

EXECUTED as a deed.

THE COMMON SEAL of CITY OF
 FREMANTLE was hereunto affixed
 this 20th day of JUNE 1996
 pursuant to a resolution passed on the
 day of 199
 in the presence of:

)
)
)
)
)



.....
J. K. Archibald

Mayor

.....
 J. K. ARCHIBALD

Name of Mayor
(print)

.....
[Signature]

Town Clerk

.....
 RAY GLICKMAN

Name of Town Clerk
(print)

SIGNED SEALED AND DELIVERED by

.....

in the presence of:

.....

.....

)
)
)



Witness

Name of Witness

SIGNED SEALED AND DELIVERED by

presence of:

)
)
)

[Redacted Signature]

[Redacted Name]

Witness

[Redacted Name]

Name of Witness

I, _____, Minister for Heritage, certify that I am satisfied that this Heritage Agreement is necessary for the purposes of, and complies with the Heritage of Western Australia Act 1990.

[Handwritten Signature]

Minister for Heritage

27/8/96

Date

