

Heritage Council of Western Australia

and



HERITAGE AGREEMENT

**The Rocks,
182 - 188 Grey Street, Albany**

TABLE OF CONTENTS

Part 1	Definitions & Interpretation	
1.1	Definitions	1
1.2	Interpretation	2
Part 2	Commencement, Duration and Scope of this Agreement	2
2.1	Commencement and duration of this Agreement	2
2.2	Scope of this Agreement	2
Part 3	Development and Conservation	3
3.1	Conservation Works, Development	3
3.2	Conservation Consultant	3
3.3	Maintenance	3
3.4	Compliance with Statutes	3
3.5	Permanent Registration	3
<hr/>		
Part 4	Council's Rights of Entry and Powers of Inspection	3
4.1	Council's rights of entry and powers of inspection	3
Part 5	Default	4
5.1	Events of default	4
5.2	Rights and remedies of Council	4
5.3	Land and Place at risk of Owner	4
5.4	Interest on overdue money	4
Part 6	General	5
6.1	Variation to be in writing	5
6.2	Governing Law	5
6.3	Further assurances	5
6.4	Extension of time by Council	5
6.5	Costs	5
	The Schedule	6

§18(1) Heritage WA Act.
EXEMPT from W.A. Stamp Duty

HERITAGE AGREEMENT

The Rocks

182 - 188 Grey Street, Albany

for Commissioner of State Revenue

THIS AGREEMENT is made on the _____ day of _____ 1998 between the following parties:

1. **HERITAGE COUNCIL OF WESTERN AUSTRALIA** of 108 Adelaide Terrace, East Perth, (the "Council"); and

2. _____

RECITALS:

- A. The _____ is the registered proprietor of the land.
- B. The Place is entered in the Register of Heritage Places on an interim basis pursuant to the Act.

AGREEMENT:

The parties agree with each other as follows.

WESTERN AUSTRALIA STAMP DUTY
26-FEB-99 001365761-001
DEE
DU \$
SD \$ *****.00 PEN \$*****.00
EXEMPT 100 %

Part 1

Definitions & Interpretation

1.1 Definitions

In this Agreement, unless the contrary intention appears:

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

"this Agreement" means this agreement as it may from time to time be varied as permitted by its terms;

"Conservation Plan" means the conservation plan in respect of the Place described in item 4 of the Schedule as may from time to time be varied with the approval of the Council;

"Conservation Works" means the works specified in item 5 of the Schedule;

"Construction Completion Date" means:

- (a) in the case of immediate term works as described in Annexure B, the date 3 months from the Effective Date of this Agreement; and
- (b) in the case of medium term works as described in Annexure B, the date 24 months from the Effective Date of this Agreement.

"Construction Period" means:

- (a) the period commencing on the Effective Date and expiring on the Construction Completion Date; or
- (b) any longer period agreed between the Council and the owner of the Place in writing;

"Damage" means losses, costs, damages, liabilities, expenses, actions, suits or claims of any kind;

"Effective Date" means the date on which this Agreement is sealed by the Council;

"Event of Default" is defined in clause 5.1;

"Land" means the land described in Item 3 of the Schedule;

"Minister" means the Minister responsible for the administration of the Act;

"Owner" means:

- (a) [REDACTED] for so long as the [REDACTED] is the registered proprietor, and
- (b) any other owners of the Land, "Owner" having the meaning ascribed to it by section 3(2) of the Act;

"Place" means the place described in Item 1 of the Schedule and situated on, or forming part or the whole of, the Land;

"Significant Fabric" means those parts of the fabric of the Place as are specified in Item 2 of the Schedule;

and

words and expressions having defined meanings in the Act, unless otherwise defined in this clause, have the meanings so defined in the Act.

1.2 Interpretation

In this Agreement, unless the contrary intention appears:

- (a) a reference to any statute, regulation, proclamation, ordinance or by-law includes all statutes, regulations, proclamations, ordinances or by-laws varying, consolidating or replacing them, and a reference to a statute includes all regulations, proclamations, ordinances and by-laws issued under that statute;
- (b) a covenant or agreement by more than one person binds, and is enforceable against, those persons jointly and each of them severally;
- (c) no rules of construction apply to the disadvantage of a party on the basis that that party was responsible for the preparation of this Agreement or any part of it.

Part 2

Commencement, Duration and Scope of this Agreement

2.1 Commencement and duration of this Agreement

Subject to the provisions of this Agreement, this Agreement commences on the Effective Date and shall be of permanent effect unless terminated with the written consent of the Council.

2.2 Scope of this Agreement

- (a) This Agreement:
 - (1) applies to the Land and the Place;
 - (2) binds the Land and the Place; and
 - (3) binds the Owner.
- (b) All of the obligations of the Owner under this Agreement are covenants made pursuant to section 29(10) of the Act and are intended to run with the Land.
- (c) The rights and obligations of the Owner under this Agreement are not assignable by the Owner without the written consent of the Council.
- (d) Subject to sub-clause (e), on an Owner transferring the whole of the interest of that Owner in the Place and the Land to another person, the transferring Owner is released from all personal liability under this Agreement.
- (e) The provisions of sub-clause (d) will not apply in respect of any liability or claim which arose prior to the date of registration of the transfer of the whole of the interest of the transferring Owner to another person.

Part 3
Development and Conservation

3.1 Conservation Works, Development

- (a) The Owner of the Place must, during the Construction Period, undertake the conservation of the Place:
- (i) as recommended by the Conservation Plan; and
 - (ii) by completing the Conservation Works specified in item 5 of the Schedule, in each case in accordance with plans and specifications first approved by the Heritage Council.
- (b) The Owner shall not:
- (i) carry out any development on or of the Place; or
 - (ii) without prejudice to the generality of sub-clause (b)(i), do or permit to be done anything on or in relation to the Place which adversely affects the cultural heritage significance or characteristics of the Place,
- except as permitted by this clause or as otherwise approved by the Council.

3.2 Conservation Consultant

- (a) The Owner must appoint a consultant approved by the Council to supervise the Conservation Works, and must commission the consultant to provide the Council with written progress reports detailing the Conservation Works which have been completed.
- (b) The written progress reports must be submitted to the Council (a) every six months during the Construction Period, and (b) within one month of completion of the Conservation Works as defined in this agreement.

3.3 Maintenance

The Owner shall maintain the Significant Fabric, as restored and adapted with the approval of the Council, in a proper, safe and sound standard of repair and condition in all respects to the reasonable satisfaction of the Council.

3.4 Compliance with Statutes

Nothing in this Agreement removes, limits or modifies the obligations on the Owner to comply with all relevant statutory and other requirements in connection with the development of the Land, and the Owner is responsible to obtain all approvals consents and licences required for development of the Land, including planning approvals and building licences, from all relevant bodies and authorities including the local government authority.

3.5 Permanent Registration

The Owner supports the entry of the Place into the Register of Heritage Places on a permanent basis.

Part 4
Council's Rights of Entry and Powers of Inspection

4.1 Council's rights of entry and powers of inspection

- (a) Subject to sub-clause (b) the Council shall, through its nominated representative or nominated officer from time to time, have the power to enter the Place at reasonable times, and on reasonable prior notice, for any purpose related to the provisions of this Agreement, including without limitation to inspect the Place with a view to ensuring compliance with the provisions of this Agreement.

- (b) Subject to sub-clause (c), the Council will comply with any reasonable requirement imposed by the Owner for the purpose of exercising the rights of the Council under sub-clause (a).
- (c) The Owner must do all things necessary to enable the Council to exercise its rights of inspection as set out in sub-clause (a), including without limitation ensuring that reasonable access is provided to all parts of the Place and ensuring access to and use of any facility at the Place which is necessary to facilitate inspection.

Part 5 Default

5.1 Events of default

- (a) An Event of Default occurs if:
 - (1) the Owner is in breach of or does not comply with any of its obligations under this Agreement and the breach or non-compliance continues for 30 days, or such longer period as is reasonable for rectification having regard to the nature of the breach or non-compliance, after receipt of written notice from the Council to effect compliance; or
 - (2) the Owner repudiates or commits a fundamental breach of this Agreement.

5.2 Rights and remedies of Council

In the event any Event of Default occurs, the Council shall be entitled to exercise any one or more of the following powers:

- (a) through its agents, contractors or employees enter the Place and take such actions as are in the Council's opinion necessary to rectify the Event of Default (including attending to any construction or other works); together with or separately from
- (b) any rights and remedies which may be available to the Council at law or in equity; together with or separately from
- (c) the rights, powers and remedies available to the Council under the Act,

and nothing in this Agreement limits or prejudices or shall hinder the exercise by the Council or the Minister or any other person of any of the rights, powers or remedies available to the Council, the Minister or that person under the Act if an Event of Default occurs, or any other event occurs which is a breach of any provision of the Act.

5.3 Land and Place at risk of Owner

The Land and the Place shall remain at the risk of the Owner in all respects, notwithstanding any provisions in this Agreement dealing with the development of the Land or the Place and without limitation all development of the Land or the Place shall be conducted entirely at the risk of the Owner and the Owner shall indemnify and keep indemnified and save harmless the Council against all Damage incurred or suffered by the Council arising from or in connection with the development or occupation of the Land or the Place by the Owner or any person claiming through or under the Owner.

5.4 Interest on overdue money

If the Owner becomes liable to pay any amount of money to the Council pursuant to this Agreement or arising from any matter the subject of this Agreement, the Owner shall pay to the Council interest on that amount from and including the due date for payment of the amount to but excluding the actual date of payment of that amount. The interest is to be paid on demand by the Council, is to be calculated on daily balances, and is to be at the rate then payable on judgment debts pursuant to the provisions of the Supreme Court Act.

**Part 6
General**

6.1 Variation to be in writing

Any variation of this Agreement must be in writing executed by the Council and the Owner.

6.2 Governing Law

This Agreement is governed by the laws of the State of Western Australia and the parties submit to the jurisdiction of that State.

6.3 Further assurances

Each party shall do all things and execute all further documents as are necessary to give full effect to this Agreement.

6.4 Extension of time by Council

The Council may, at the Council's discretion and by written notice to the Owner, extend any time period for performance by the Owner of any of its obligations under this Agreement.

6.5 Costs

- (a) The Owner shall pay or reimburse the Council on demand for all the Council's costs and expenses in relation to:
 - (1) the exercise or enforcement by the Council of any right, power or remedy under this Agreement; and
 - (2) any act or omission by the Owner causing Damage to the Council, including the Council's legal costs and expenses.
- (b) Each party shall pay all its own legal costs and expenses in relation to the preparation, execution and stamping of this Agreement.

The Schedule

- Item 1:** *The Rocks*, which is situated at 182 - 188 Grey Street, Albany and consists of the Land described in Item 3 and the works and buildings on it.
- Item 2:** **Significant Fabric**
The whole of the Place.
- Item 3:** Albany Lots 1475, 1476 and 1477, being the whole of the land comprised in Certificates of Title Volume 2147 Folios 368 to 370 respectively.
- Item 4:** **Conservation Plan**
Reserve 27280 "*The Rocks*" Conservation Plan, prepared by Donaldson, Smith and Hooke for the Building Management Authority, c.1995, a copy of which is attached to the agreement as Annexure A.
- Item 5:** **Conservation Works**
The Schedule of works described in Annexure B.
-

EXECUTED AS A DEED.

THE COMMON SEAL of the HERITAGE)
COUNCIL OF WESTERN AUSTRALIA was)
hereunto affixed in the presence of:)



Maurice Owen
Signature of authorised person

Stephen Carrick
Signature of authorised person

CHAIRMAN
Office held

ACTING DIRECTOR OF HERITAGE
Office held COUNCIL OF WA.

MAURICE OWEN
Name of authorised person

STEPHEN CARRICK
Name of authorised person

Signed by:

[Redacted]
Signature of authorised person

Signature of authorised person

In the [Redacted]
[Redacted]
Signature of Witness

[Redacted] the presence of:

Signature of Witness

[Redacted]
Name of Witness (please print)

Name of Witness (please print)

**CERTIFICATE UNDER SECTION 32 OF THE HERITAGE OF WESTERN AUSTRALIA
ACT 1990**

I, The Hon. Graham Kierath, MLA, Minister for Heritage, hereby certify that this Agreement is necessary for the purposes of, and complies with, the Heritage of Western Australia Act.

Dated the 22ND day of FEBRUARY 19 99



MINISTER FOR HERITAGE

CONSERVATION WORKS

Immediate Works - within three months

- Structural Inspection should precede any refurbishment work and to include inspection of the subsiding Dining Room and the cracking under the Master Bedroom ensuite.

Medium Term Works - within twenty four months

- Make good verandah structure.
- Jack and restump north end of Dining Room.
- Remove concrete floor to rear stair, redirect drainage, treat walls for damp, make good floor.
- Replace defective verandah boards.
- Replace aluminium joinery to main stone building in timber to match original.
- Remove asbestos lining to verandah, investigate fixing of original lining and replace with mini orb or match boarding as appropriate.
- Replace steel balustrade with timber, scrolled 125 x 75 handrail and 40 x 40 balusters at 165 mm centres, 75 x 50 bottom rail and triangulated supports, all to match original detail.
- A master landscape plan should be prepared for the enhancement of the grounds to provide an appropriate setting for the building. The master plan should incorporate new planting's of appropriate species, traditionally grown in Albany, restore former features such as the rock edging to the driveway and path and remove intrusive elements, such as dead trees, inadequate drainage and inappropriate planting.