

FREEHILL  
HOLLINGDALE  
& PAGE

Heritage Council of Western Australia

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and

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**Heritage Agreement  
Fitzgerald Hotel  
63 Fitzgerald Street  
North Perth**

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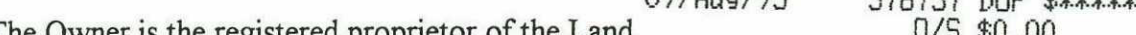

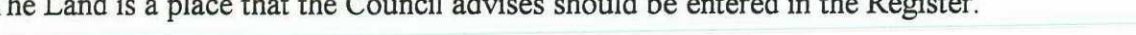
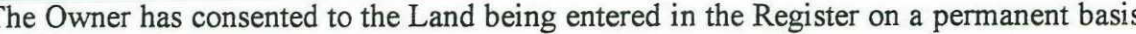













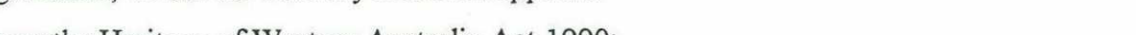
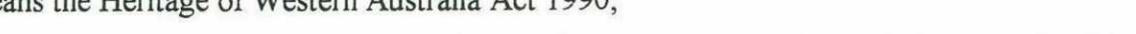
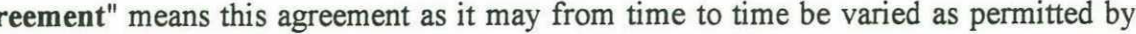




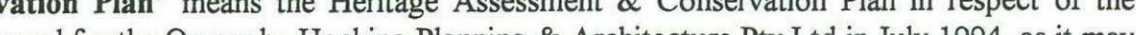
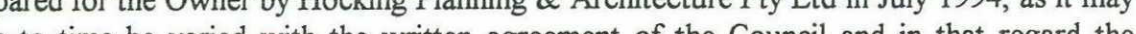
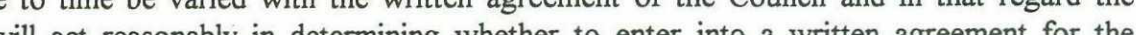
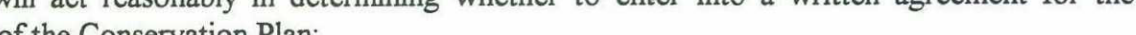

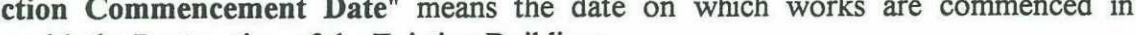








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*[Signature]*

for Commissioner of State Taxation

**HERITAGE AGREEMENT  
FITZGERALD HOTEL**

THIS AGREEMENT is made on the *3rd* day of *July* 1995 between the following parties:

1. **HERITAGE COUNCIL OF WESTERN AUSTRALIA** of 292 Hay Street, East Perth, Western Australia (the "Council"); and
2. , Western Australia,   
  
  
  
  
  
  
  
  
  
  
  
  
  
  
  
  
  
  
  
  
  
  
  
  
  
  
  
  
  
  
  
  
  
  
  
  
  
  
  
  
  
  
 Western Australia (the "Owner").

**RECITALS:**

WESTERN AUSTRALIA STAMP DUTY  
09/Aug/95 376737 DUP \$\*\*\*\*\*0.00  
0/S \$0.00

- A. The Owner is the registered proprietor of the Land.
- B. The Land is a place that the Council advises should be entered in the Register.
- C. The Owner has consented to the Land being entered in the Register on a permanent basis and has agreed to enter into this Agreement.
- C. The Minister has given his approval to the Council on behalf of the Crown entering into this Agreement.

**AGREEMENT:**

The parties agree with each other as follows.

**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;

"Burra Charter" means The Australia ICOMOS Charter for the Conservation of Places of Cultural Significance;

"Conservation Plan" means the Heritage Assessment & Conservation Plan in respect of the Land prepared for the Owner by Hocking Planning & Architecture Pty Ltd in July 1994, as it may from time to time be varied with the written agreement of the Council and in that regard the Council will act reasonably in determining whether to enter into a written agreement for the variation of the Conservation Plan;

"Construction Commencement Date" means the date on which works are commenced in connection with the Restoration of the Existing Building;

"Construction Period" means:

- (a) the period commencing on the Effective Date and expiring on 30 June 1999, subject to extension in accordance with clause 6.2; or
- (b) any longer period agreed between the Council and the Owner of the Land in writing;

**"Damage"** means losses, costs, damages, liabilities, expenses, actions, suits or claims;

**"Default"** means any event, action, inaction or failure to observe or perform any covenants, conditions, terms, agreements, provisions or obligations on the part of any person expressed or implied in, or in relation to, this Agreement, or any event, action, inaction or failure to observe or perform any covenants, conditions, terms, agreements, provisions or obligations on the part of any person expressed or implied in, or in relation to, this Agreement which, with the giving of notice or the lapse of time or the satisfaction of some other condition, would become an event of default under this Agreement;

**"Development Proposal"** means the Owner's proposal for development of the Land by the restoration and modification of the Existing Building and construction of further buildings on the Land as residential dwellings, generally in accordance with schematics prepared by Puddy Lee Architects in [DATE] 1994;

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

**"Expert"** means an independent person appointed, by the President for the time being of the Law Society of Western Australia Inc at the request of either the Council or the Owner, to determine a dispute between the Council and the Owner as set out in this Agreement, the person to have, in the opinion of the President, appropriate qualifications and experience to determine the particular dispute;

**"Event of Force Majeure"** means any event beyond the reasonable control of the owner of the Land including without limitation inclement weather, war, national emergency, fire, flood, earthquake, explosion, lightning, storm, tempest or similar cause, injunctions or court orders or any lawful restraint (unless any order, injunction or lawful restraint was imposed by reason of the failure to observe and obey any legal requirement, or obligation under this Agreement), civil commotions, any combination of workers, picket lines, bans, boycotts (including secondary boycotts), any refusal to supply, strikes, industrial disputes or stoppages or any prohibition or embargo imposed by any Act (State or Federal), regulation, ordinance, proclamation, by-law, declaration, or order, but does not include inability to obtain finance on acceptable terms;

**"Existing Building"** means the building known as the Fitzgerald Hotel, situate on and forming part of the Land as at July 1994 and as described in the Conservation Plan;

**"General Conditions"** means the provisions set out in the Schedule;

**"Initial Restoration Works"** means the works specified in Annexure "A";

**"Land"**:

- (a) means the land known as and situate at 63 Fitzgerald Street, Northbridge Western Australia, being more particularly Portion of Perth Town Lot Y 142 and being Lot 5 and part of each of Lots 3 and 4 on Plan 50 and comprising the whole of the land in Certificate of Title Volume 1282 Folio 120; and
- (b) includes the common property the subject of the Strata Plan and each individual lot on the Strata Plan,

in each case together with any buildings thereon from time to time;

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

**"Original Owner"** means each person who is defined as the Owner at the Effective Date.

**"owner of the Land"** means:

- (a) the Owner, for so long as the Owner is registered proprietor of the Land;
- (b) the owner or owners of the Land from time to time, as the expression "owner" is defined in the Act,

and includes the Strata Company and each person who is the registered proprietor of a lot on the Strata Plan;

**"Preliminary Period"** means the period commencing on the Effective Date and terminating on the Construction Commencement Date;

**"Rates and Taxes Remissions"** means the rates and taxes remissions in respect of the Land specified in Annexure B;

**"Remission Entitlement Date"** means the date on which the works relating to the Restoration of the Existing Building have been completed in accordance with clause 3.2(a);

**"Restoration of the Existing Building"** means the restoration of the Existing Building as described in clause 3.2;

**"Strata Company"** means the Strata Company formed upon registration of the Strata Plan;

**"Strata Plan"** means any strata plan registered in respect of the Land to give effect to, or as part of or pursuant to, the Development Proposal;

**"The 1885 Portion of the Building"** means the portion of the Existing Building as is indicated on the plan attached to this Agreement;

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 a person includes a reference to a natural person and to a company, partnership, joint venture, association, corporation or other body corporate and any governmental agency;
- (b) 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;
- (c) a reference to a clause is a reference to a clause in this Agreement;
- (d) a reference to a sub-clause is a reference to a sub-clause in the clause in which the reference appears;
- (e) a reference to a party to any document includes that party's successors and permitted assigns;
- (f) a covenant or agreement by more than one person binds, and is enforceable against, those persons jointly and each of them severally;
- (g) if an association, body or authority, statutory or not, ("body") ceases to exist or is reconstituted, renamed, replaced or its powers or functions are transferred to any other

body, a reference to that body means the body established or constituted in its place or that undertakes the powers or functions of that body; and

- (f) 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, duration and scope**

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 Agreement conditional on registration as registered place**

- (a) This Agreement is conditional on the Land being entered in the Register within 12 months of the Effective Date.
- (b) If the Land is not entered in the Register within 12 months of the Effective Date, this Agreement will terminate and cease to be of any force and effect and no party will have any claim against any other party arising from the termination other than in respect of any claim or matter which arose prior to the date of termination.
- (c) The Council shall, where it is within its power to do so and is not a breach of any of its powers or obligations, use its best endeavours to procure that the Land is entered in the Register within 12 months of the Effective Date.

#### **2.3 Scope of this Agreement**

- (a) This Agreement:
- (1) applies to the Land;
  - (2) binds the Land;
  - (3) binds the owner of the Land; and
  - (4) where a Strata Plan is registered in respect of the Land, will bind the Strata Company and each person who is the registered proprietor of a lot on the Strata Plan.
- (b) All of the obligations of the owner of the Land 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 of the Land under this Agreement are not assignable by the owner of the Land.
- (d) Subject to sub-clause (e), on an Original Owner transferring the whole of the interest of the Original Owner to another person, the Original Owner is released from all personal liability under this Agreement.
- (d) 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 Original Owner to another person.

#### **2.4 Entry of the Land on the Register**

The Owner consents to the entry of the Land in the Register on a permanent basis under the Act and waives all rights it may otherwise have to be given any notice of the entry or to make or have considered any submissions with respect to the same.

### Part 3

## Matters affecting the Land, Rates and Taxes Remissions

### 3.1 Initial Restoration Works and Conservation during Preliminary Period

- (a) The owner of the Land must carry out and complete the Initial Restoration Works within the time periods specified in Annexure "A". In considering whether to give its approval to the works set out in Annexure A, the provisions of clause 3.3 shall apply to the Council, and if any dispute arises as to whether the Owner has complied with its obligations under this sub-clause the provisions of clause 3.4(c) shall apply as if the dispute was a dispute under the provisions of clause 3.4.
- (b) Subject to sub-clause (c), the owner of the Land must after completion of the Initial Restoration Works and during the Preliminary Period maintain the Existing Building in a sound and watertight condition and in a fit and proper state having regard to the nature of the Initial Restoration Works.
- (c) Without affecting the provisions of sub-clauses (a) and (b), the owner of the Land must as soon as practicable after the Effective Date undertake all work as is necessary to:
- (1) prevent any further water damage to the Existing Building; and
  - (2) prevent any further vandalism to the Existing Building.

### 3.2 Restoration of Existing Building

- (a) The owner of the Land must, during the Construction Period, undertake the restoration of the Existing Building:
- (1) by restoration and reconstruction works to the Existing Building as recommended by the Conservation Plan;
  - (2) by other works (including modification and adaptation of the Existing Building and the construction of new buildings sympathetic to the style of the Existing Building) as are approved by, and subject to conditions or requirements as are stipulated by, the Council in accordance with clause 3.3,
- in each case in accordance with plans and specifications first approved by the Council.
- (b) For the purposes of sub-clause (a):
- (1) if the Council is requested by the owner of the Land to amend the Conservation Plan, the Council will act reasonably in determining whether or not to agree amendments to the Conservation Plan; and
  - (2) in exercising the right to grant approval for the matters specified in sub-clause (a)(2) and in imposing conditions or requirements as provided in sub-clause (a)(2), the Council will act reasonably, and in doing so, will have regard to the following:
    - (A) the state of repair of the Existing Building as at July 1994;
    - (B) the obligation of the owner of the Land to carry out the Initial Restoration Works; and
    - (C) the Development Proposal including the plan prepared by Puddy Lee Architects as referred to in the definition of Development Proposal.
- (c) The owner of the Land shall not carry out any development on or of the Land except as permitted by this clause.

- (d) It is acknowledged that:
- (1) the Development Proposal contemplates demolition of The 1885 Portion of the Building as part of a re-development of the Land;
  - (2) if the Development Proposal does not proceed, the owner of the Land shall not demolish The 1885 Portion of the Building without prior written consent of the Council.

### 3.3 Approval of development by the Council

When considering any request for consent or approval or in stipulating or formulating any conditions or requirements for the purposes of clause 3.2, the Council shall act reasonably having regard to, and shall give due consideration to:

- (a) any submissions made by the owner of the Land;
- (b) the Conservation Plan;
- (c) the development of the Land as a sympathetic whole in the context of the Existing Building and the surrounding land and built environment;
- (d) the provisions of the Act, and
- (e) the state of repair of the Existing Building as at July 1994,

and the Council shall not unreasonably delay consideration of any request by the owner of the Land in connection with development of the Land, provided that:

- (e) the Council is entitled to have regard to other matters in addition to those set out in paragraphs (a), (b), (c), (d) and (e) of this clause 3.3, including without limitation the Burra Charter; and
- (f) the Council will not be considered to be acting unreasonably or unreasonably delaying making a decision if it requires the owner of the Land to first obtain the consent or approval of some relevant authority (whose consent or approval is required to the relevant matter) before the Council considers the relevant matter.

### 3.4 Maintenance

- (a) After completion of the works specified in clause 3.2(a), the owner of the Land shall maintain the buildings on the Land:
  - (1) in the case of the Existing Building, as restored and adapted pursuant to the provisions of clause 3.2; and
  - (2) in the case of other buildings on the Land, as constructed in accordance with Council approval under clause 3.2,

in a proper, safe and sound standard of repair and condition in all respects to the reasonable satisfaction of the Council.
- (b) For the purposes of sub-clause (a), the owner of the Land shall carry out or cause to be carried out all repairs and maintenance works on the Land and to the buildings on the Land:
  - (1) in a proper workmanlike manner using appropriate materials having regard to the nature of the works;
  - (2) in accordance with plans and specifications approved by the Council, acting reasonably.



- (c) If there is any dispute between the Council and the owner of the Land as to whether the owner of the Land has complied with the obligations of the owner of the Land in this clause 3.4, the dispute will be determined by an Expert, whose decision will be final and binding on the parties. For the purposes of this sub-clause:
- (1) the Expert will act as an expert and not as an arbitrator;
  - (2) all costs of making the determination under this sub-clause, including the Expert's fees and the parties' costs, will be borne by the party against whom the decision is made if the Expert determines that the party was not acting bona fide in bringing the dispute for determination, and in any other case shall be payable as determined by the Expert;
  - (3) the Expert will receive submissions from each of the Council and the owner of the Land.

### 3.5 Rates and Taxes Remissions

- (a) It is acknowledged that in order to secure the restoration of the Existing Building, the Council recommended to the Minister that the Rates and Taxes Remissions be granted to the Owner.
- (b) The benefit of the Rates and Taxes Remissions will apply to the Land and the owner of the Land as follows:
- (1) the benefit will not apply until the Remission Entitlement Date;
  - (2) the owner of the Land will be responsible for payment of all rates taxes and other charges applicable to the Land in full in accordance with assessments issued by relevant authorities until the Remission Entitlement Date;
  - (3) if the Remission Entitlement Date occurs before expiry of the period over which the Rates and Taxes Remissions accrue in relation to any particular rate tax or charge, the Council shall pay to the owner of the Land that proportion of the relevant Rates and Taxes Remission which applies to assessments issued before the Remission Entitlement Date and the owner of the Land shall be entitled to claim subsequent remissions as the relevant notice of assessment of rate, tax or charge is received by it;
  - (4) if a Strata Plan is registered against the Land, the Rates and Taxes Remissions will be apportioned between the owners of the lots on the Strata Plan in accordance with their respective unit entitlements at the relevant date for apportionment, unless otherwise resolved by the Strata Company.
- (c) If there is any dispute between the Council and the owner of the Land as to whether the works relating to the restoration of the Existing Building have been completed in accordance with clause 3.2(a) or as to the Remission Entitlement Date, the dispute will be determined by an Expert whose decision will be final and binding on the parties. For the purposes of this sub-clause:
- (1) the Expert will act as an expert and not as an arbitrator;
  - (2) the Expert will determine liability for payment of all costs incurred in making a determination under this sub-clause;
  - (3) the Expert will receive submissions from each of the Council and the owner of the Land.

- (d) The grant of the Rates and Taxes Remissions does not prevent the owner of the Land from seeking from the Council:
- (1) assistance for the owner of the Land in obtaining any necessary approvals for the works referred to in clause 3.2(a); or
  - (2) any other benefit, in addition to the Rates and Taxes Remissions, which may be available for the owner of the Land under the Act.
- (e) It is acknowledged that, pursuant and subject to section 37 of the Act, the owner of the Land may cease to be entitled to the Rates and Taxes Remissions and may become liable to pay amounts remitted in whole or in part if, amongst other things, the owner of the Land commits a contravention of any of the provisions of this Agreement within the meaning of the Act.
- (f) Where the actual amount of any remission of a rate, tax or charge is less than the maximum total remission specified in the Rates and Taxes Remissions, the Council shall, where it is within its power to do so and is not a breach of any of its powers or obligations, use its best endeavours to assist the owner of the Land in obtaining remissions of other rates taxes and charges in respect of the Land equivalent to the amount of the unutilised portion of the Rates and Taxes Remissions.

### **3.6 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 authority.

## **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-clauses (b), and (c), the Council shall, through its nominated representative or nominated officer from time to time, have the power to enter on the Land at all reasonable times for any purpose related to the provisions of this Agreement including without limitation:
- (1) to inspect the Land and all buildings and improvements on the Land with a view to ensuring compliance with the provisions of this Agreement; and
  - (2) to assess or evaluate the development of the Land at that time and to assess or evaluate other or future development of the Land.
- (b) The Council will not exercise the power specified in sub-clause (a) except on reasonable notice to the owner of the Land.
- (c) The Council will comply with any reasonable requirement imposed by the owner of the Land for the purpose of exercising the rights of the Council under sub-clause (a).

## Part 5 Default and Indemnities

### 5.1 Events of default

a) An Event of Default occurs if:

- (1) Subject to sub-clauses (b), (c) and (d), the owner of the Land is in breach of or does not comply with any of its obligations under this Agreement and the breach or non-compliance continues for 60 days, or such longer period as is reasonable for rectification having regard to the nature of the breach or non-compliance and, in the case of any works extended by the duration of any Event of Force Majeure, after receipt of written notice from the Council to effect compliance; or
- (2) the owner of the Land repudiates or commits a fundamental breach of this Agreement.

(b) The owner of the Land will not be treated as being in breach of the obligations of the owner of the Land for the purposes of sub-clause (a)(1) where:

- (1) the breach requires the undertaking of building works by the owner of the Land; and
- (2) subject to sub-clause (c), the owner of the Land implements procedures to remedy the breach within the period specified in sub-clause (a)(1).

(c) If the provisions of sub-clause (b) apply, the owner of the Land will not be treated as being in breach of this Agreement where the owner of the Land:

- (1) applies within the period specified in the notice in sub-clause (a)(1) for every necessary approval to undertake the building works and diligently progresses every necessary application;
- (2) following the grant of every necessary approval, the owner of the Land undertakes or causes the commencement of the necessary works within a reasonable time of the granting of every necessary approval and thereafter causes the works to be diligently progressed until completion; and
- (3) promptly and regularly notifies the Council in writing of all developments relating to the matters specified in sub-clauses (c)(1) and (c)(2).

(d) The owner of the Land will not be treated as being in breach of or not in compliance with the obligations of the owner of the Land for the purposes of sub-clause (a)(1) where:

- (1) the alleged breach or non-compliance arises prior to the exhaustion of the Rates and Taxes Remissions;
- (2) the owner of the Land within 7 days of receipt of a default notice from the Council gives written notice to the Council ("Default Dispute Notice") that the owner of the Land disputes that there has been a breach of or non-compliance with its obligations under this Agreement; and
- (3) an independent person appointed by the President for the time being of the Law Society of W.A. Inc. at the request of the Council or the owner of the Land determines that the owner of the Land is not in breach of and has complied with its obligations under this Agreement.

If the independent person determines that the owner of the Land is in breach of or has not complied with any of its obligations under this Agreement, the owner of the Land shall be

deemed to have received written notice from the Council to effect compliance in accordance with sub-clause (a)(1) on the date the determination is made, and is not entitled to issue any further Default Dispute Notice.

## **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) any rights and remedies which may be available to the Council at law or in equity; together with or separately from
- (b) 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 Indemnities**

- (a) The owner of the Land shall indemnify and keep indemnified and save harmless the Council against any Damage incurred or suffered by the Council arising from or in connection with the occurrence of an Event of Default including in each case all legal costs and expenses relating to any of those matters.
- (b) The Council shall indemnify and keep indemnified and save harmless the owner of the Land against any Damage incurred or suffered by the owner of the Land arising from or in connection with any default by the Council in its obligations under this Agreement including in each case all legal costs and expenses relating to any of those matters.

## **5.4 Land at owner's risk**

The Land shall remain at the risk of the owner of the Land in all respects, notwithstanding any provisions in this Agreement dealing with the development of the Land and without limitation all development of the Land shall be conducted entirely at the risk of the owner of the Land and the owner of the Land 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 by the owner of the Land or any person claiming through or under the owner of the Land, provided that this indemnity shall not extend to any Damage to the extent caused by the exercise of the Council's powers of entry or inspection under clause 4.1.

## **5.5 Interest on overdue money**

If the owner of the Land 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 of the Land 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.

## **5.6 No waiver of rights by Council**

An attempt by the Council to mitigate its loss or the acceptance of any money under this Agreement by the Council is not a waiver of:

- (a) any breach by the owner of the Land of its obligations under this Agreement or the Act; or
- (b) acceptance of any repudiation of this Agreement by the owner of the Land.

## Part 6

### Force Majeure, Extension of Construction Period

#### 6.1 Obligations suspended during Events of Force Majeure

The obligations of the owner of the Land to commence or carry out any works on the Land as required by this Agreement will be suspended during any period that the owner of the Land is prevented from commencing or carrying out the works by any Event of Force Majeure.

#### 6.2 Extension of Construction Period

- (a) Subject to sub-clauses (b), (c) and (d), the Construction Period shall be extended by any period of time during which it is not commercially viable, having regard to all relevant circumstances, to commence or carry on the works necessary to effect the Restoration of the Existing Building.
- (b) Extension of the Construction Period is conditional upon the owner of the Land giving prompt written notice of claim to the Council of the on-set of any period referred to in sub-clause (a) ("Extension Claim"), and the Extension Claim must state the anticipated length of the period.
- (c) If the Council, by written notice to the owner of the Land ("Extension Dispute Notice") given within 14 days of receipt of the Extension Claim disputes the Extension Claim or the grounds for its issue in any respect, then the extension claimed in the Extension Claim will apply only if and to the extent it is determined as a proper extension in accordance with sub-clause (a) by an independent person appointed at the request of either the Council or the owner of the Land by the President for the time being of the Institute of Valuers and Land Economists Inc (W.A. Division) whose decision, including as to costs, shall be final and binding on the parties.
- (d) The Construction Period may not be extended pursuant to sub-clause (a) beyond 30 June 2000.
- (e) The Owner acknowledges that the Council has entered into this Agreement in good faith on the representation of the Owner that as at the Effective Date the Owner intends to carry out the Development Proposal or substantially similar works for development of the Land, and in particular the Restoration of the Existing Building, with completion of those works intended to be effected prior to 30 June 1999.

## Part 7

### Variation of this Agreement

#### 7.1 Parties to consult

In view of the permanent effect of this Agreement, the Council and the owner of the Land shall, if reasonably requested by the other, consult with a view to variation of the terms of this Agreement having regard to altered or unforeseen circumstances arising after the Effective Date, but nothing in this clause obliges the Council or the owner of the Land to agree to any variation of this Agreement.

#### 7.2 Variation to be in writing

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

**Part 8**  
**General**

**8.1 General Conditions to apply**

The General Conditions apply to this Agreement.

**8.2 Costs and stamp duty**

- (a) The owner of the Land 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 of the Land causing Damage to the Council, including the Council's legal costs and expenses.
- (b) The Owner shall pay all stamp duty assessed on this Agreement and shall pay the sum of \$2,500.00 towards the Council's legal costs and expenses in relation to the preparation of this Agreement.

## The Schedule

### General Conditions

#### 1. 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.

#### 2. Exclusion of moratoria

Any statute, moratorium or other governmental order that prejudicially affects the rights, powers or discretions of the parties pursuant to this Agreement does not apply to this Agreement unless application is mandatory.

#### 3. Notices

Any notice or other communication including, but not limited to, any request, demand, consent or approval, to or by a party to this Agreement:

(a) must be in writing addressed:

- (1) if to the Council - to the Council at its address as set out in this Agreement or to any other address notified by the Council to the owner of the Land from time to time; and
- (2) if to the owner of the Land - at the address of the owner of the Land as registered in the register book established and maintained under the Transfer of Land Act 1893 (WA);

(b) must be signed by or on behalf of the sender;

(c) is deemed to be given by the sender and received by the addressee:

- (1) if given by delivery in person, when delivered to the addressee;
- (2) if sent by security post and if posted from an address within Australia to an address within Australia, on the third day from and including the date of posting, but if posted by security post from outside Australia, or posted to an address outside Australia, then on the sixth day from and including the date of posting.

#### 4. Waiver

(a) Any waiver of a breach of this Agreement or of any rights created by or arising upon an Event of Default under this Agreement must be in writing and signed by the party giving the waiver.

(b) A breach of this Agreement is not waived by:

- (1) a failure to exercise,
- (2) a delay in exercising, or
- (3) the partial exercise,

of any remedy available under this Agreement or of law or in equity.

(c) Any right created by, or arising upon an Event of Default under this Agreement is not waived by:

- (1) a failure to exercise,
- (2) a delay in exercising, or
- (3) a partial exercise of,

that right.

#### 5. Cumulative rights

Without limitation to any part of this Agreement, the Council's rights, powers, authorities, discretions and remedies arising out of or under this Agreement are cumulative and additional to any rights, powers, authorities, discretions and remedies provided under the Act, or under any other statute, planning scheme or by-law, or at law or in equity.

#### 6. Further assurances

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

7. Severability

- (a) Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction is, as to that jurisdiction, ineffective only to the extent of that prohibition or unenforceability and does not invalidate the remaining provisions of this Agreement or affect the validity or enforceability of the provision in that or any other jurisdiction. This paragraph will not apply if its application would affect materially the legal or commercial arrangements intended to operate.
- (b) Without limiting paragraph (a) of this provision, if any provision of this Agreement is void, voidable by any party, unenforceable or illegal, it must be read down so as to be valid and enforceable or, if it cannot be so read down, the provision (or where possible the offending words) is to be severed from this Agreement without affecting the validity, legality or enforceability of the remaining provisions (or parts of those provisions) which continue in full force and effect, provided that the reading down of or severance of terms from this Agreement does not affect materially this Agreement to the prejudice or detriment of any party.

8. Relationship of parties

Nothing in this Agreement express or implied constitutes any party the agent or partner of any other in relation to any action taken or any arrangement entered into in relation to the Land, development of the Land or anything done in the course thereof.

**EXECUTED AS A DEED.**

**THE COMMON SEAL of HERITAGE COUNCIL OF WESTERN AUSTRALIA**  
is affixed in the presence of:

*Maurice Owen*  
Signature of authorised person

CHAIR PERSON  
Office held

MAURICE OWEN  
Name of authorised person

*Ian H. Baxter*  
Signature of authorised person

DIRECTOR  
Office held

IAN H. BAXTER  
Name of authorised person

THE COMMON SEAL of [redacted] was affixed to this deed in [redacted]

[redacted]  
Secretary/Director  
[redacted]  
Name (please print)

[redacted]  
[redacted]  
Director  
[redacted]  
Name (please print)



THE COMMON SEAL of [REDACTED]

[REDACTED] was affixed to this deed in the presence of:

Secretary/Director

Name (please print)

Director

Name (please print)

THE COMMON SEAL of [REDACTED]

[REDACTED] was affixed to this deed in the presence of:

Secretary/Director

Name (please print)

Director

Name (please print)

THE COMMON SEAL of [REDACTED]

[REDACTED] was affixed to this deed in the presence of:

Secretary/Director

Name (please print)

Director

Name (please print)

**Annexure A****Initial Restoration Works****To be completed within 6 months after the Effective Date:**

- Replace burnt out rafters, sheeting, flashings, gutters and downpipes as necessary.
- Check structural ties to parapets and replace as necessary.
- Check structural adequacy of canopy and repair or replace damaged materials to match existing.
- Premises to be made secure from further vandalism and maintained in a presentable condition pending commencement of further restoration work.
- All above to be approved by the Council.

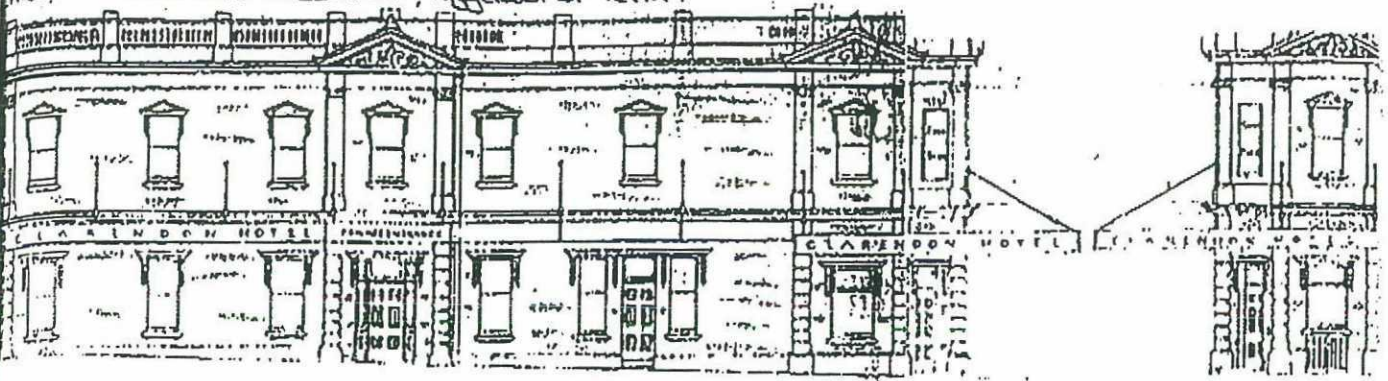
**To be completed within 18 months after the Effective Date:**

- Remove brick infills to window and door openings and reinstate window frames and doors to both street frontages.
- Repair damaged stucco mouldings to facade, clean off graffiti and repaint previously painted surfaces of street facades to an approved colour scheme.
- All above to be approved by the Council.

**Annexure B****Rates And Taxes Remissions**

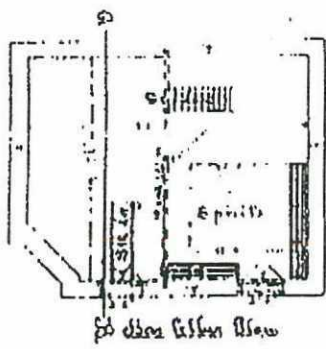
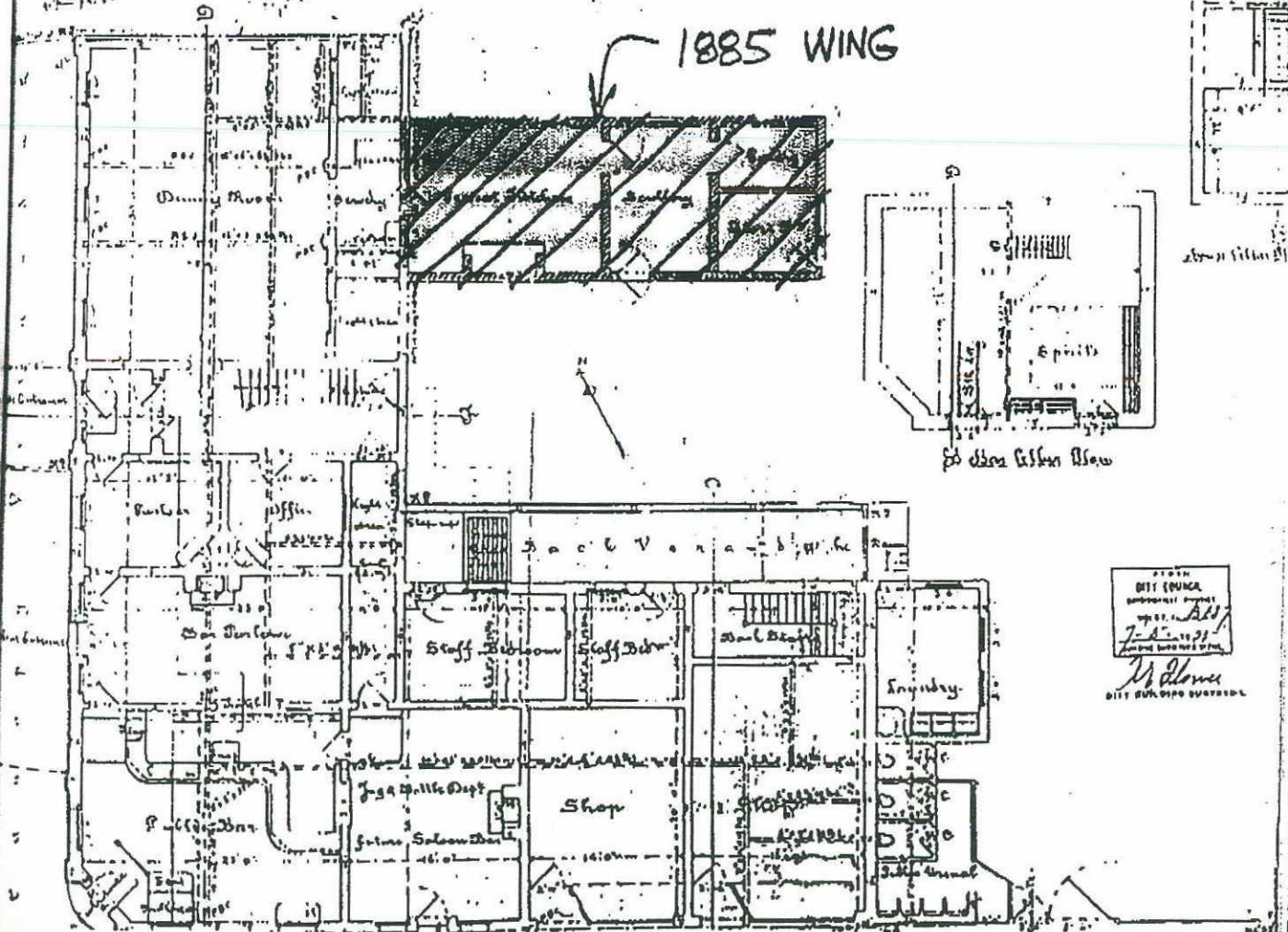
- (a) The whole of the Land tax payable under the Land Tax Act 1976 (excluding all arrears, interest on arrears or penalties for late payment due at June 30th 1994), to a maximum total remission over 5 years of \$25,000.
- (b) The whole of the sewer and water rates payable to the Water Authority of Western Australia (excluding all arrears, interest on arrears or penalties for late payment due at June 30th 1994), to a maximum total remission over 5 years of \$24,000.
- (c) The whole of the headwork charges payable to the Water Authority of Western Australia arising from any development of the subject land after 30 June 1994, to a maximum total remission over 5 years of \$45,000.

ARGENTEN HOTEL now FITZGERALD, Fitzgerald St Perth



Elevation to Fitzgerald St

1885 WING



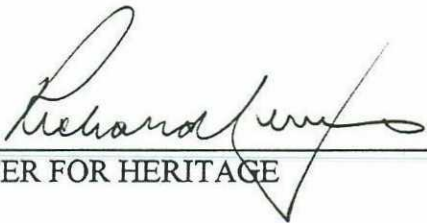
JOHN  
 DEE QUACK  
 ARCHITECT  
 7-11-1911  
 JOHN DEE QUACK ARCHITECT  
 J. Deane  
 JOHN DEE QUACK ARCHITECT

J. C. Spriter  
 Architect  
 305 Ch.  
 St. S.

CERTIFICATE UNDER SECTION 32 OF THE HERITAGE OF WESTERN  
AUSTRALIA ACT

I, The Hon. Richard Lewis JP, 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 *3rd* day of *July* 19 *95*.



MINISTER FOR HERITAGE