

Heritage Council of Western Australia

and



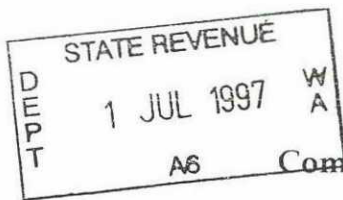
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HERITAGE AGREEMENT

COMMONWEALTH BANK BUILDING, FORREST PLACE  
PERTH

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EXEMPT from W.A. Stamp Duty

## HERITAGE AGREEMENT

Commonwealth Bank, Forrest Place, Perth

*[Signature]*  
for Commissioner of State Revenue

THIS AGREEMENT is made on the *27th* day of *June* 1997 between the following parties:

1. HERITAGE COUNCIL OF WESTERN AUSTRALIA of 108 Adelaide Terrace, East Perth, Western Australia (the "Council"); and
2. [REDACTED]

### RECITALS:

- A. [REDACTED] is the registered proprietor of the Land.
- B. The Place is entered in the Register of Heritage Places on a permanent basis pursuant to the Act.

### 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;

"Conservation Plan" means the Conservation Plan in respect of the Place described in clause 3.3;

"Construction Completion Date" means the date 18 months after the Effective Date;

"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;

"Conservation Works" means the works specified in the Conservation Plan as being urgently required for the conservation of the Place;

"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 [REDACTED] is the registered proprietor of the Land;
- (b) any other owners, "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, subject to clause 5.2(c), 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 of the Place.
- (b) All of the obligations of the Owner of the Place 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 Place under this Agreement are not assignable by the Owner of the Place without the written consent of the Council.
- (d) Subject to sub-clause (e), on an Owner of the Place 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 must, during the Construction Period, complete the Conservation Works specified in the Conservation Plan as being urgently required for the conservation of the Place,  
in accordance with plans and specifications first approved by the Council.
- (b) The Owner of the Place shall not:
  - (1) carry out any development on or of the Place; or
  - (2) without prejudice to the generality of sub-clause (b)(1), 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 or of the Significant Fabric,
 except as permitted by this clause or as otherwise approved by the Council.

#### **3.2 Maintenance**

The Owner of the Place 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.

#### **3.3 Conservation Plan**

- (a) The Owner must by December 31st 1997 produce to the satisfaction of the Council a Conservation Plan for the Place, utilising the services of a consultant approved by the Council. The Council undertakes to cooperate with and assist the Owner in this regard.
- (b) The Owner may vary a Conservation Plan from time to time but only in accordance with the approval of the Council.
- (c) When carrying out any development the Owner shall comply with the Conservation Plan and without prejudice to the generality hereof shall implement the conservation policies prescribed in the Conservation Plan.

### 3.4 Use

Except with the prior written approval of the Council which shall not unreasonably be withheld the Owner shall:

- (a) use the Place or permit it to be used only for purposes classified as permitted uses in the Zone within which the Place is situated under the City of Perth City Planning Scheme as at the time this Agreement is executed;

and

- (b) ensure the Ground Floor Banking Chamber remains accessible to the public during normal trading hours provided that this paragraph will not be construed to prevent the Owner from utilising portions of the Ground Floor Banking Chamber for purposes which are consistent with the cultural heritage significance of the Place.

The Council, in giving approval for changes to the above uses, shall take into account the cultural heritage significance of the Place and of the changing technological and commercial circumstances governing the operation of commercial banking services in Australia.

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### 3.5 Signs

Except with the prior written approval of the Council which shall not unreasonably be withheld the Owner shall not fix or place or permit to be fixed or placed signs, notices or advertisements to the outside of the building unless such signs, notices or advertisements comply with the design criteria set out in the Conservation Plan.

### 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-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), Council will comply with any reasonable requirement imposed by the Owner of the Place for the purpose of exercising the rights of the Council under sub-clause (a).
- (c) The Owner of the Place 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 of the Place 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 of the Place 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) to terminate this agreement; together with or separately from
- (d) 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 of the Place**

The Land and the Place shall remain at the risk of the Owner of the Place 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 of the Place and the Owner of the Place 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 of the Place or any person claiming through or under the Owner of the Place.

### **5.4 Interest on overdue money**

If the Owner of the Place 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 Place 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 of the Place.

### **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 of the Place, extend any time period for performance by the Owner of the Place of any of its obligations under this Agreement.



**6.5 Costs**

- (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 Place 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.
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**The Schedule**

- Item 1:**           **The Place**  
Commonwealth Bank Building  
Cnr Forrest Place and Murray Street, Perth  
Perth Lots Pt V13, V14, V15 and V16 being the whole of the land  
comprised in Certificate of Title Volume 1737 Folio 866.
- Item 2:**           **Significant Fabric**  
The whole of the Place
- Item 3:**           **Land**  
Perth Lots Pt V13, V14, V15 and V16 being the whole of the  
land comprised in Certificate of Title Volume 1737 Folio 866.
-

EXECUTED AS A DEED.



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

[Signature]  
Signature of authorised person

[Signature]  
Signature of authorised person

DIRECTOR  
Office held

CHAIRPERSON  
Office held

IAN HADYN BAXTER  
Name of authorised person

MAURICE ANTHONY OWEN  
Name of authorised person

SIGNED

by [Redacted]

in the presence of:

[Redacted]

Witness

[Redacted]

Name (please print)

SIGNED

by

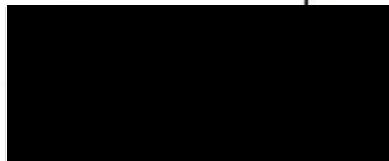
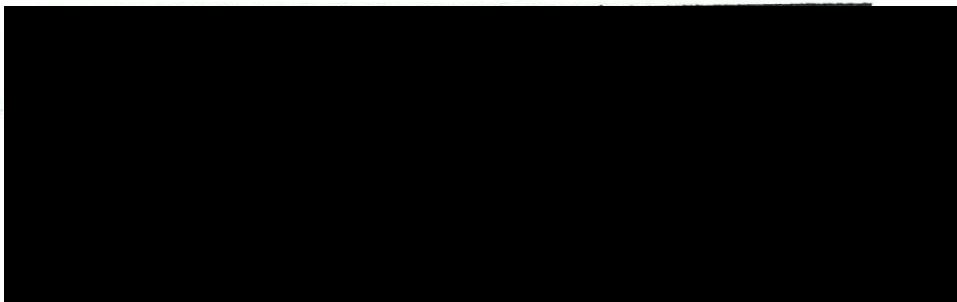
in the presence of:

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Witness

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Name (please print)



CERTIFICATE UNDER SECTION 32 OF THE HERITAGE OF WESTERN  
AUSTRALIA ACT

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 27<sup>th</sup> day of JUNE 1997

A handwritten signature in black ink, appearing to read 'G. Kierath', is written over a horizontal dashed line. Below the dashed line, the text 'MINISTER FOR HERITAGE' is printed.

MINISTER FOR HERITAGE