

Heritage Council of Western Australia

and

[REDACTED]  
[REDACTED]

## HERITAGE AGREEMENT

Nulsen Haven,  
Great Eastern Highway, Redcliffe

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**HERITAGE AGREEMENT**  
for Commission of State Revenue  
Nulsen Haven, Great Eastern Highway, Redcliffe

THIS AGREEMENT is made on the 15<sup>th</sup> day of October 1997 between the following parties:

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

2. [REDACTED]  
[REDACTED]

**RECITALS:**

- A. [REDACTED]  
[REDACTED] are, or are about to become, the registered proprietors of the land, as tenants in common in equal shares.
- B. The Place is entered in the Register of Heritage Places on 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 item 4 of the Schedule as may from time to time be varied with the approval of the Council;

"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]  
[REDACTED] are the registered proprietors of the Land;

- (b) any other owners of the Land, "Owner" having the meaning ascribed to it by section 3(2) of the Act;

"Nulsen Haven Special Design Guidelines" means the Nulsen Haven Special Design Guidelines prepared by The Planning Group and adopted by the City of Belmont;

"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 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 No Development without the Council's Approval**

- (a) The Owner must conserve and where necessary restore the Place in accordance with:
  - (1) the Conservation Plan; and
  - (2) the Nulsen Haven Special Design Guidelines,in each case in accordance with plans and specifications first approved by the Council.
- (b) The Owner 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



### 3.2 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.

### 3.3 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 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 Place**

Nulsen Haven situated at 458-464 Great Eastern Highway, Redcliffe, which consists of the Land described in Item 3 and the works and buildings on it

**Item 2:**

**Significant Fabric**

- The original 1904 building identified in the Conservation Plan as "building A" and also known as "Invercloy";
- the driveway space framing the garden and entrance to the 1904 building;
- the croquet lawn or front garden;
- significant trees as identified in the Conservation Plan.

**Item 3:**

**Land**

Lots 131-135 (inclusive) and Lots 170-173 (inclusive) on Plan 1792 (Sheet 3), being the balance of the land remaining in Certificate of Title Volume 1820 Folio 663.

**Item 4:**

**Conservation Plan**

"Nulsen Haven, Redcliffe: Conservation Plan" prepared by Duncan Stephen and Mercer, June 1995.

EXECUTED AS A DEED.

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

[Signature]  
Signature of authorised person

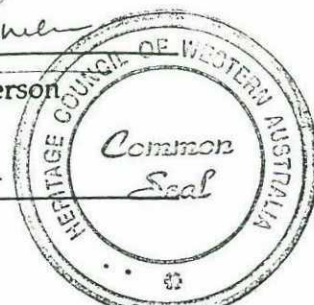
DIRECTOR  
Office held

IAN BAXTER  
Name of authorised person

[Signature]  
Signature of authorised person

CHAIRMAN  
Office held

MAURICE ANTHONY OWEN  
Name of authorised person



SIGNED

by

in presence of

[Redacted]  
Name (please print)

SIGNED

by

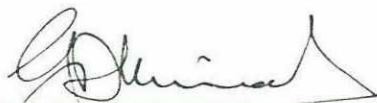
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CERTIFICATE UNDER SECTION 32 OF THE HERITAGE OF WESTERN AUSTRALIA ACT

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 15<sup>th</sup> day of OCTOBER 1987



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MINISTER FOR HERITAGE