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**CITY OF FREMANTLE**



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

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**CORRS CHAMBERS WESTGARTH**  
150 St George's Terrace  
Perth Western Australia 6000  
**AUSTRALIA**  
Telephone (09) 321 8531  
Facsimile (09) 322 6953  
Ref: REO  
FREM0610-216

THIS DEED is made on

26 August

1998

BETWEEN

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

AND

[REDACTED]

("Owner")

## RECITALS

- A The Land is a registered place pursuant to the Act.
- B The Municipality and the Owner have entered into the Heritage Agreement in relation to the Land.
- C The Municipality and the Owner have agreed to vary the Heritage Agreement as set out in this document.

## OPERATIVE PROVISIONS

### 1. INTERPRETATION

WESTERN AUSTRALIA STAMP DUTY  
21-OCT-98 001401446-001  
SD \$ \*\*\*\*\*20.00 PEN \$ \*\*\*\*\*.00

#### 1.1 Definitions

In this document:

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

"Council" means the Heritage Council of Western Australia established pursuant to section 5 of the Act.

"encumber" means mortgage, pledge, lien, charge, assignment, hypothecation, security interest, title retention, preferential right or trust arrangement or any other security agreement or arrangement.

"Heritage Agreement" means the Heritage Agreement made 27 August 1996 between the Municipality and the Owner, a copy of which is annexure "A" to this document.

"Land" means Fremantle Town Lot 92 being the whole of the land in Certificate of Title Volume 1200 Folio 361 and includes any part thereof.

#### 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 a 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 Western Australia;
  - (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) anything (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. SUBSTANTIVE PROVISIONS**

### **2.1 Variation of Heritage Agreement**

The Municipality and the Owner agree that item 8 of the schedule to the Heritage Agreement shall be deleted and replaced with the following:

- "8. Removal of concrete floor and replacement with timber floor in all areas other than those areas outlined in red on the Plan."

2.2 The plan annexed to this document as **annexure "B"** will be deemed to be the plan annexed to the Heritage Agreement and referred to in item 8 of the schedule to the Heritage Agreement as varied by this document.

3. This deed of variation is subject to the prior consent of the Council pursuant to section 29(4) of the Act.

#### 4. MISCELLANEOUS

##### 4.1 Stamp Duty

(a) The Owner shall, as between the parties, be liable for and duly pay all stamp duty (including any fine or penalty except where it arises from default by the other party) on or relating to this document and any document executed under it.

(b) If a party other than the Owner pays any stamp duty (including any fine or penalty on or relating to this document or any document executed under it), the Owner shall pay that amount to that party upon demand.

##### 4.2 Legal Costs

4.2.1 Subject to any express provision in this document to the contrary, the Owner shall bear its own and the Municipality's legal and other costs and expenses relating directly or indirectly to the preparation of this document including the cost of registering or withdrawing any memorial under the Act.

4.2.2 The stamp duty and legal costs payable by the Owner under clauses 4.1 and 4.2.1 shall not exceed \$100.00.

##### 4.3 Amendment

This document may only be varied or replaced by a document duly executed by the parties.

##### 4.4 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.

##### 4.5 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.

##### 4.6 Approvals and Consent

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

#### **4.7 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.

#### **4.8 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.

#### **4.9 Governing Law and Jurisdiction**

- (a) 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.
- (b) This document is governed by and is to be construed in accordance with the laws in force in Western Australia.

#### **4.10 Assignment**

A party shall not dispose of or encumber any right under this document without the prior written consent of the other party.

#### **4.11 Joint and Several Liability**

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

#### **4.12 Counterparts**

This document may consist of a number of counterparts and if so the counterparts taken together constitute one and the same instrument.

#### **4.13 Entire Understanding**

- (a) All previous negotiations, understandings, representations, warranties, memoranda or commitments in relation to, or in any way affecting, the subject matter of this document are merged in and superseded by this document and shall be of no force or effect whatever and no party shall be liable to any other party in respect of those matters.
- (b) This document embodies the entire understanding and agreement between the parties as to the subject matter of this document.
- (c) No oral explanation or information provided by any party to another shall:
  - (i) affect the meaning or interpretation of this document, or
  - (ii) constitute any collateral agreement, warranty or understanding between any of the parties.

EXECUTED as a deed.

THE COMMON SEAL of CITY OF  
FREMANTLE was hereunto affixed  
this 26 day of AUGUST 1998  
pursuant to a resolution passed on the  
day of 199  
the presence of:



)  
)  
)  
)  
)  
)

*[Handwritten Signature]*  
.....  
RICHARD CUTTING  
.....

Mayor

Name of Mayor  
(print)

*[Handwritten Signature]*  
.....  
RAY SLICKMAN  
.....

Chief Executive Officer

Name of Chief Executive Officer  
(print)

SIGNED SEALED AND DELIVERED by  
[Redacted]  
in the presence of:



.....  
.....

Witness [Redacted]

Name of Witness

SIGNED SEALED AND DELIVERED by  
[Redacted]  
in the presence of:

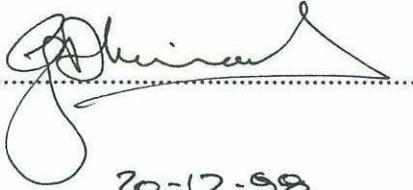


.....  
.....

Witness: [Redacted]

Name of Witness

I, Minister for Heritage, approve the variation of the Heritage Agreement effected by this document.



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Minister for Heritage

20-12-98

.....  
Date