

LANDS TITLES REGISTRATION OFFICE
SOUTH AUSTRALIA
GRANT OF EASEMENT

FORM APPROVED BY THE REGISTRAR-GENERAL

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PRIORITY NOTICE ID	
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AGENT CODE

LODGED BY:

COWELL CLARKE

CCL1

CORRECTION TO:

COWELL CLARKE

CCL1

SUPPORTING DOCUMENTATION LODGED WITH APPLICATION
(COPIES ONLY)

- 1
- 2
- 3
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PLEASE ISSUE NEW CERTIFICATE(S) OF TITLE AS FOLLOWS:

- 1
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CORRECTION	PASSED
REGISTERED	
REGISTRAR-GENERAL	

GRANT OF EASEMENT

(Pursuant to Section 96 of the Real Property Act 1886)

PRIVACY COLLECTION STATEMENT: The information in this form is collected under statutory authority and is used for maintaining publicly searchable registers and indexes. It may also be used for authorised purposes in accordance with Government legislation and policy requirements.

LAND DESCRIPTION OVER WHICH RIGHTS AND LIBERTIES ARE BEING GRANTED

The whole of the land comprised in Certificate of Title Volume 6135 Folio 772

ESTATE & INTEREST

Fee simple

GRANTOR(S) (Full name and address)

THE TRUST COMPANY LTD as custodian for the Cromwell Grenfell Street Trust (ACN 004 027 749) care of level 19, 200 Mary Street, Brisbane 4000

CONSIDERATION (Words and figures)

Nil (Value does not exceed \$100.00)

GRANTEE(S) (Full name, address, mode of holding and appurtenant land description)

THE CORPORATION OF THE CITY OF ADELAIDE of 25 Pirie Street, Adelaide SA 5000

THE GRANTOR ACKNOWLEDGES RECEIPT OF THE CONSIDERATION HEREIN EXPRESSED AND HEREBY GRANTS TO THE GRANTEE:

The Grantor grants to the Grantee and its employees, agents, contractors and workmen a right to affix, maintain and replace seventeen (17) beams ("**Arbor Beams**") on those portions of the land comprised in Certificate of Title Volume 6135 Folio 772 marked "C" on FX [INSERT] including on the improvements erected from time to time on that land.

AND the Grantor and the Grantee, the parties to this easement hereby covenant and agree as set out in Annexure A.

TO BE HELD APPURTENANT TO:

Easement in gross.

ANNEXURE A

1. Easement Rights

The Grantor agrees that in order for the Grantee to exercise the rights granted pursuant to this Easement, but for no other purpose, the Grantee may at its own cost following the giving of reasonable notice except in the case of an immediate and substantial risk to the safety of property or person when no notice shall be required:

- 1.1 exercise the rights under this Easement either itself or by any of the Grantee's employees, agents, contractors, officers, invitees and other persons claiming through or under the Grantee;
- 1.2 inspect and repair any of the Arbor Beams;
- 1.3 replace by affixation to the Easement Land any or all of the Arbor Beams in the same manner as the then existing beams are affixed (or otherwise as agreed by the Grantor) for which purpose the Grantee shall be entitled to undertake such work on the façade of the Building adjacent to the relevant Easement Land as is reasonably required for the purpose of such replacement; and
- 1.4 do anything else that is reasonably necessary to exercise its rights pursuant to this Easement.

2. Easement Obligations

The Grantee must:

- 2.1 maintain the Arbor Beams at all times in good and substantial repair order and condition (fair wear and tear excepted);
- 2.2 use its reasonable endeavours to maintain the vines adjacent to the Land and to keep them pruned and watered on such occasions as shall be required to keep them in good condition;
- 2.3 prior to exercising any rights under clause 1 provide the Grantor with reasonable prior notice except in the case of an immediate and substantial risk to the safety of property or person when no notice shall be required:
- 2.4 in exercising any rights under clause 1, and subject to the giving of appropriate notice:
 - 2.4.1 ensure that all work is done in a proper and workmanlike manner;
 - 2.4.2 comply with all relevant laws and any reasonable direction of the Grantor;
 - 2.4.3 cause as little inconvenience or obstruction as practicable to the Grantor and any occupier of the Grantor's Land;
 - 2.4.4 cause as little damage as practicable to the Grantor's Land, and the Building including the Easement Area;
 - 2.4.5 if damaged by the Grantee, restore the Grantor's Land and Building as nearly as practicable to its former condition
- 2.5 prior to exercising any rights under clause 1.3, obtain the Grantor's prior written consent which consent will not be unreasonably withheld or refused where the Grantee satisfies the Grantor that a beam or beams need reasonably be replaced and that no damage will be caused by such replacement, which cannot be reasonably restored or rectified.
- 2.6 indemnify and keep indemnified the Grantor from all damage, loss, or claims the Grantor suffers or incurs arising from the Grantee's negligent or wilful act or omission in the exercise of any of the Grantees rights in clause 1.

3. **Extinguishment of Easement**

- 3.1 The Grantor and the Grantee agree that if at any time after the expiration of the Initial Period the Grantee determines that it wishes to extinguish this Grant of Easement but is prepared to allow the Arbor Beams to remain, the following provisions shall apply:
- 3.1.1 the Grantee will simultaneously give written notice to the Grantor and the Adjoining Owner of the Grantee's intention to extinguish this Grant of Easement;
 - 3.1.2 the Grantor and the Grantee will meet with the Adjoining Owner to discuss Council's intention to extinguish the Easement;
 - 3.1.3 if within the period of ninety (90) days from the date of service by the Grantee of a notice on the Grantor and the Adjoining Owner the Grantor and the Grantee do not agree to retain the Arbor Beams, the Grantee shall at any time thereafter be entitled to remove the Arbor Beams in which event:
 - (a) the provisions of clauses 2.4.1 to 2.4.5 shall apply; and
 - (b) the Grantor and the Grantee will cause to be certified an Extinguishment of Easement which shall be lodged for registration at Land Services SA at the Grantee's cost and expense;
 - 3.1.4 if within the period of ninety (90) days from the date of service by the Grantee of a Notice on the Grantor and the Adjoining Owner the Grantor and the Adjoining Owner agree to retain the Arbor Beams and either or both the Grantor or the Adjoining Owner agree to take a transfer of the ownership of the Arbor Beams, the Grantee agrees that it will not remove the Arbor Beams and the Grantor and the Grantee will cause to be certified an Extinguishment of Easement which shall be lodged for registration at Land Services SA at the Grantee's cost and expense. Ownership of the Arbor Beams will transfer to the Grantor and/or the Adjoining Owner (as the case may be) automatically upon registration of the Extinguishment of Easement;
 - 3.1.5 upon extinguishment of this Grant of Easement pursuant to clause 3.1.4:
 - (a) the Grantor and the Adjoining Owner will be responsible to negotiate and document the arrangements to apply between them with respect to the ongoing presence of the Arbor Beams; and
 - (b) the Grantor and the Adjoining Owner will make application to the Grantee for a permit pursuant to the *Local Government Act* upon the Grantee's usual terms and conditions for such permit in order to enable the Arbor Beams to remain constructed over a public street.
- 3.2 The Grantor agrees that if at any time after the expiration of the Initial Period the Grantee determines that it no longer wishes to retain the Arbor Beams and wishes to extinguish this Grant of Easement, the Grantee shall be entitled to remove the Arbor Beams in which event:
- 3.2.1 the provisions of clauses 2.4.1 to 2.4.5 shall apply; and
 - 3.2.2 the Grantor and the Grantee will cause to be certified an Extinguishment of Easement which shall be lodged for registration at Land Services SA at the Grantee's cost and expense.
- 3.3 If the Grantor proposes to demolish that part of the Building comprising the Easement Land or any part of it and the Grantor does not propose to replace that part of the Building in the same or similar location and the demolition has received all required statutory approvals, then subject to the Grantor giving the Grantee at least three (3) months' written notice setting out reasonable details of the proposal sufficient to indicate a genuine intent to demolish, this easement shall be extinguished with effect from the date upon which the Grantor commences the demolition of the Building ("**Extinguishment Date**") and as soon as practicable after the Extinguishment Date the Grantor and the Grantee will cause to be certified an Extinguishment of Easement which shall be lodged for registration at Land Services SA at the Grantee's cost and expense.

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- 3.4 If the Grantor proposes to demolish that part of the Building comprising the Easement Land or any part of it and the Grantor does propose to replace that part of the Building in the same or similar location and the Grantee determines to provide temporary support for the Arbor Beams until such construction has been completed then this Easement and the rights granted pursuant to this Easement shall continue in full force and effect provided that such rights shall be suspended until such time as construction of the replacement building has been completed at which time the Grantee shall be entitled to exercise all such rights.

4. **Limitation of Liability**

The parties acknowledges that the Grantor is only entering into this Grant of Easement as custodian/bare trustee of the Cromwell Grenfell Street Trust (**Scheme**) and the parties agree, notwithstanding any other provisions of this agreement that:

- 4.1 The Grantor is liable under this agreement only as custodian/bare trustee of the Scheme and not in its own right (or as trustee of any other trust);
- 4.2 a reference to the Grantor in this agreement means the Grantor as custodian of the Scheme and not in its own right (or as trustee of any other trust); and
- 4.3 the remedies of the other parties against the Grantor as custodian of the Scheme are limited to the Grantors right of indemnity from the assets of the Scheme and equitable lien or other encumbrance against the property of the Scheme to secure the right of indemnity. This clause shall not apply in relation to any amounts owed, due or payable under this agreement by the Grantor to the other parties arising from any fraud or negligence or dishonesty of the Grantor or as consequence of any breach of the constitution of the Scheme.

5. **Definitions**

In this easement unless the contrary intention appears:

- 5.1 "**Adjoining Owner**" means the registered proprietor from time to time of the whole of the land in Certificate of Title Volume 6127 Folio 671;
- 5.2 "**Building**" means the building erected on the Land;
- 5.3 "**Easement Land**" means those portions of the land comprised in Certificate of Title Volume 6135 Folio 772 marked "C" in FX **[INSERT]**;
- 5.4 "**Grantee**" means The Corporation of the City of Adelaide;
- 5.5 "**Grantor**" means The Trust Company Ltd as custodian of the Cromwell Grenfell Street Trust;
- 5.6 "**Initial Period**" means the period of 10 years from the date of lodgement of this Grant of Easement for registration; and
- 5.7 "**Land**" means the whole of the land in Certificate of Title Volume 6135 Folio 772.

DATED.....

CERTIFICATION **Delete the inapplicable*

Grantor(s)

- *The Certifier has taken reasonable steps to verify the identity of the grantor or his, her or its administrator or attorney.
- *The Certifier holds a properly completed Client Authorisation for the Conveyancing Transaction including this Registry Instrument or Document.
- *The Certifier has retained the evidence to support this Registry Instrument or Document.
- *The Certifier has taken reasonable steps to ensure that the Registry Instrument or Document is correct and compliant with relevant legislation and any Prescribed Requirement.

Signed By:

Name of certifying party
Capacity of certifying party

for: Company name
On behalf of the Grantor

Grantee(s)

- *The Certifier has taken reasonable steps to verify the identity of the grantee or his, her or its administrator or attorney.
- *The Certifier holds a properly completed Client Authorisation for the Conveyancing Transaction including this Registry Instrument or Document.
- *The Certifier has retained the evidence to support this Registry Instrument or Document.
- *The Certifier has taken reasonable steps to ensure that the Registry Instrument or Document is correct and compliant with relevant legislation and any Prescribed Requirement.

Signed By:

Name of certifying party
Capacity of certifying party

for: Company name
On behalf of the Grantee

CONSENT TO THE GRANT OF AN EASEMENT

CONSENTING PARTY (Full Name and Address)

NATURE OF ESTATE OR INTEREST HELD

I/We the consenting party consent to the

- (1)* discharge of *Encumbrance / *Mortgage over the easement being granted pursuant to Section 144 of the Real Property Act 1886.
- (2)* granting of the easement subject to *Encumbrance / *Mortgage pursuant to Section 90F of the Real Property Act 1886.

* Strike through the inapplicable

EXECUTION BY CONSENTING PARTY

DATED

.....
Signature of CONSENTING PARTY

.....
Signature of CONSENTING PARTY

.....
Signature of WITNESS - Signed in my presence by the CONSENTING PARTY who is either personally known to me or has satisfied me as to his or her identity. A penalty of up to \$5000 or 1 year imprisonment applies for improper witnessing.

.....
Signature of WITNESS - Signed in my presence by the CONSENTING PARTY who is either personally known to me or has satisfied me as to his or her identity. A penalty of up to \$5000 or 1 year imprisonment applies for improper witnessing.

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Print Full name of Witness (BLOCK LETTERS)

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Print Full name of Witness (BLOCK LETTERS)

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Address of Witness

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Address of Witness

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Business Hours Telephone No.....

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Business Hours Telephone No.....