Heritage Act 2018 (WA)

HERITAGE AGREEMENT

between

HERITAGE COUNCIL OF WESTERN AUSTRALIA

and

[redacted]

in respect of

Lot 32 on Plan 543

a portion of

OLDHAM RESIDENCE, SWANBOURNE
(HCWA Place No.8091)

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HERITAGE AGREEMENT

THIS AGREEMENT is made between the following parties:

1. **HERITAGE COUNCIL OF WESTERN AUSTRALIA** a body corporate established pursuant to the *Heritage Act 2018*, of Level 2, 140 William Street, Perth, Western Australia, 6000 (the "**Council**"); and

2. [redacted] (the "**Owner**").

RECITALS

A. The Place was entered in the Register on 8 January 2010.

B. The Land is located on the Place.

C. The Owner is the registered proprietor of the Land and is specified in Item 3 of the Schedule.

D. The Owner is required to enter into a heritage agreement in relation to the Land part of a subdivision condition.

E. The Council and the Owner remains committed to the continuing conservation of the Land to retain its cultural heritage significance for present and future generations under this Agreement.

F. This Agreement is binding on the current and successive owners of the Land to ensure its ongoing conservation and maintenance.

AGREEMENT:

The Parties agree with each other as follows:

1. DEFINITIONS AND CONSTRUCTION

1.1. DEFINITIONS

In this Agreement, unless the contrary intention appears:

"**Act**" means the *Heritage Act 2018 (WA)*;

"**Agreement**" means this Agreement as it may from time to time be varied as permitted by its terms;

"**Completion Date**" means –

(a) in relation to Conservation Works, the date specified in the Annexure referred to in Item 5 of the Schedule; and

(b) in relation to the Interpretation Works, the date specified in the Annexure referred to in Item 9 of the Schedule.

"**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 prior written approval of the Council;

"**Conservation Works**" means the works specified in the Annexure referred to in Item 5 of the Schedule;

"**Damage**" means physical damage, losses, costs, damages, liabilities, expenses, actions, suits or claims of any kind;

"**Development**" means the physical works carried out on the Land or the Use of the Land, including:

(a) any demolition, erection, construction, alteration of or addition to any building or structure on the Land;

(b) the carrying out on the Land of any excavation or other works;

(c) any act or thing that is likely to change the character of the Place or the external appearance of any building; and

(d) any act or thing that would constitute an irreversible alteration of the Significant Fabric.

"**Effective Date**" means the date on which this Agreement is certified by the Minister pursuant to section 90(5) of the Act;

"**Default Event**" is defined in clause 5.1;

"Heritage Consultant" means any person who is a qualified professional in the relevant field with considerable experience in heritage conservation services of a similar nature and scope to the works required at the Place giving due regard to the Statement of Cultural Heritage Significance and the Conservation Plan;

"Inspector" means an inspector appointed by the Minister or a police officer performing the functions of such an inspector pursuant to Part 11 of the Act;

"Interpretation Plan" means the Interpretation Plan (if any) in respect of the Place described in Item 8 of the Schedule;

"Interpretation Works" means the works (if any) described in Item 9 of the Schedule;

"**Land**" means the land described in Item 1 of the Schedule;

"**Maintenance**" means the continuous protective care of the Place as specified in the Annexure referred to in Item 7 of the Schedule;

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

"**Owner**" means:

(a) the registered proprietor of the Land identified at Item 3 of the Schedule; and

(b) the Owner or Owners of the Land from time to time, as the expression "owner" is defined in section 6 of the Act;

"**Place**" means the place described in Item 2 of the Schedule;

"**Public Authority**" has the same meaning as in the Act;

"**Register**" means the State Register of Heritage Places established pursuant to the Act;

"Registrar" means the Registrar of Titles or the Registrar of Deeds and Transfers, whichever of them is responsible for registering notification of Heritage Agreements under the Act.

"**Significant Fabric**" means any physical material of the Place including components, fixtures, contents and objects as specified in Item 6 of the Schedule; and

"**Statement of Cultural Heritage Significance**" means the statement of cultural heritage significance adopted in accordance with section 52 of the Act;

"**Use**" means the activities which are done in or on the Land but do not interfere with the actual physical characteristics of the Place.

1.2. CONSTRUCTION

In this Agreement, unless the contrary intention appears:

(a) headings, underlining and numbering are for convenience only and do not affect the interpretation of Agreement;

(b) words importing the singular include the plural and vice versa;

(c) words importing a gender include every gender;

(d) an expression importing a natural person includes a company, partnership, joint venture, association corporation or other body corporate;

(e) a reference to a thing includes a part of that thing but nothing shall mean that partial performance of an obligation equals full performance;

(f) references to parts, clauses, schedule and parties are references to parts and clauses and schedule of, and parties to, this Agreement;

(g) references to a party to this Agreement includes that party's successors and permitted assigns and in the case of a natural person also includes that person's personal representatives and administrators;

(h) where the day on or by which a thing is required to be done is not a business day that thing must be done on or by the next business day;

(i) 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;

(j) a covenant or agreement by more than one person binds, and is enforceable against, those persons jointly and each of them severally;

(k) no rule of construction applies to the disadvantage of a party on the basis that the party was responsible for drafting this Agreement or any part of it;

(l) a reference to this Agreement or any other document or instrument includes the Agreement, document or instrument (as the case may be) as varied or replaced, notwithstanding any change in the identity of the parties;

(m) a reference to the Owner doing or refraining from doing anything includes a reference to the Owner causing a person to do, or causing a person to refrain from doing, that thing (as the case may be);

(n) a reference to any thing is a reference to the whole and each part of it; and

(o) words and phrases having defined meanings in the Act, unless otherwise defined in this Agreement, have the meanings so defined in the Act.

2. COMMENCEMENT, DURATION AND SCOPE OF THIS AGREEMENT

2.1. COMMENCEMENT AND DURATION OF THIS AGREEMENT

(a) This Agreement is made for the purposes of Part 7 of the Act and is conditional upon the Minister

(i) being satisfied that this Agreement is desirable for the purposes of, and complies with, the Act; and

(ii) certifying that fact upon each executed copy of this Agreement.

(b) This Agreement commences on the Effective Date.

(c) If the Council has given notice of this Agreement to the Registrar, and that notification has been registered under s 97 of the Act, then this Agreement is binding on and enforceable against all subsequent owners of the Place

and a subsequent owner is subject to the obligations under this Agreement and the Act.

(d) The Council intends to provide notice of this Agreement to the Registrar pursuant to section 97 of the Act.

2.2. SCOPE OF THIS AGREEMENT

(a) All of the obligations of the Owner under this Agreement are made pursuant to Part 7 of the Act and are intended to run with the Land.

(b) If the Owner transfers its interest in the Place to another person then:

(i) the Owner becomes an "**Outgoing Owner**"; and

(ii) Subject to paragraph (iv), the Outgoing Owner is released from its obligations under this Agreement from the date of registration of the transfer by the Registrar; and

(iii) the subsequent owner becomes the Owner under this Agreement from the date of registration of the transfer by the Registrar; and

(iv) the Outgoing Owner remains liable for any Default Event arising prior to the registration of the transfer.

3. DEVELOPMENT AND CONSERVATION

3.1. HERITAGE CONSULTANT

(a) The Owner must appoint a Heritage Consultant to provide technical advice and documentation to manage the Conservation Works, Interpretation Works (if any), and any Development of the Place or other action which requires the approval of the Council under clauses 3.3 and 3.4.

(b) The Owner must obtain the written approval of the Council to any appointment of a Heritage Consultant pursuant to clause 3.1(a).

3.2. CONSERVATION PLAN

The parties acknowledge that the Conservation Plan is the primary guiding document for the conservation and future Use of the Place and should be read in conjunction with this Agreement.

3.3. CONSERVATION WORKS

(a) The Conservation Works must be consistent with the advice and documentation of the Heritage Consultant.

(b) The Owner must manage and carry out the Conservation Works by the Completion Date.

(c) Prior to commencement of the Conservation Works, the Owner must provide detailed specifications of the Conservation Works to the Heritage Council for the approval of the Heritage Council, which will not be unreasonably withheld.

3.4. DEVELOPMENT

Unless approved in writing by the Council, the Owner shall not:

(a) carry out any Development including the Conservation Works and Interpretation Works (if any);

(b) 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;

(c) sub-divide or make application to sub-divide the Land; or

(d) remove or demolish any Significant Fabric.

3.5. MAINTENANCE

The Owner must ensure that:

(a) the Significant Fabric, as restored and adapted with the approval of the Council, is kept in a proper, safe and sound standard of repair and condition, in accordance with Maintenance obligations specified at Item 7 of the Schedule; and

(b) reasonable measures are taken to secure the Place against trespass, vandalism, vermin and pests during any period in which the place is to be unoccupied for at least 60 consecutive days.

3.6. REPORTING

(a) All reports required in this clause shall be prepared on behalf of the Owner by the Heritage Consultant appointed pursuant to clause 3.1.

(b) The Owner must ensure that a comprehensive written report describing the completed Conservation Works specified at Item 5 of the Schedule and Interpretation Works specified at Item 9 of the Schedule (if any) is provided to the Council within 30 days after the Completion Date.

(c) The Owner must ensure that a proper, detailed and comprehensive written report is provided to the Council within 60 days after receipt of a written request from either the Council for a report describing

(i) all Conservation Works, Maintenance, Development or Interpretation Works (if any) which the Owner has undertaken pursuant to this agreement since the later of the Effective Date or the date of any previous report;

(ii) the condition of the Significant Fabric at the time of the report; and

(iii) any other matters regarding the conservation of the Place as specified in the written request;

provided that no more than one such report shall be required within any 12-month period.

(d) Subject to the requirements in section 126 of the Act, the Council may direct the Owner or occupier of the Place to provide any information relating to the Place that the Council requires and the Owner shall provide such information within 30 days of the direction.

(e) The Owner's failure to provide any report or information required under this Clause 3.6 shall constitute a Default Event.

3.7. INSURANCE

(a) The Owner must maintain and keep current with an insurer of good repute, an insurance policy for the amount specified in item 10 of the Schedule in respect of the Land , and all improvements located on that Land.

(b) The Owner:

(i) must give the Council a copy of the certificate of currency of the insurance policy referred to in clause 3.7(a) at the Effective Date; and

(ii) must submit evidence to the Council on each anniversary of the Effective Date, or as otherwise requested by the Council, which shows that the insurance policy referred to is still current.

(c) The Owner shall maintain all insurance required to be effected by it by law.

(d) In the event of any loss, damage or destruction the Owner shall, using monies recovered from its insurance policy and its own monies, fully and properly repair, replace or restore the destroyed or damaged Place.

(e) If the parties fail to agree for 90 days from the date of damage or destruction, as to whether replacement, reinstatement or restoration of the Place is practical and feasible, the parties agree to have the State Administrative Tribunal resolve the dispute pursuant to section 101 of the Act (unless agreed otherwise).

3.8. COMPLIANCE WITH STATUTES

(a) The provisions of this Agreement are intended to be consistent with the Act and any other written laws and nothing in this Agreement limits or modifies the Council's powers under the Act.

(b) 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, Conservation, Maintenance or Interpretation (if applicable) of the Place.

(c) The Owner must ascertain the need for and obtain all approvals, consents, licences and permits required for Development of the Land, Conservation or Maintenance of the Place, including planning approvals and building permits, from the relevant public authority as defined by the Act.

4. RIGHTS AND POWERS

4.1. RIGHTS OF ENTRY AND POWERS OF INSPECTION

(a) The Council shall have the power to enter the Place with the consent of the occupier or a person apparently in charge of the Place.

(b) Further, for investigation purposes including the exercise of the powers in Part 11 Division 2 of the Act, an Inspector may enter the Place

(i) with the consent of the occupier or a person apparently in charge of the Place; or

(ii) pursuant to an entry warrant.

(c) The Owner must do all things necessary to enable the Council or the Inspector, to exercise their rights of inspection as set out in clause 4.1(a) and 4.1(b), 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.

(d) Subject to the requirements set out in Part 11 of the Act, the Council or an Inspector may direct the Owner, occupier or a person apparently in charge of the Place to provide any information relating to compliance with the Act or this Agreement.

5. DEFAULT

5.1. DEFAULT EVENTS

A Default Event occurs if:

(a) the Owner is in breach of, or does not comply with, any of its obligations under this Agreement or the Act and the breach or non-compliance continues for 30 days after receipt of written notice from the Council requiring rectification of the breach or non- compliance; or

(b) the Owner repudiates or commits a fundamental breach of this Agreement which for the avoidance of doubt includes the non-performance of any works required by the annexures to this Agreement.

5.2. RIGHTS AND REMEDIES

(a) If a Default Event occurs, in addition to any penalties under the Act, the Council shall be entitled to exercise any one or more of the following powers:

(i) enter the Place and take such actions as are in the Council's opinion necessary to rectify the Default Event (including attending to any construction or other works) at the Owner's cost together with or separately from;

(ii) any rights and remedies which may be available to the Council at law or in equity, including applying to the relevant court or tribunal for an order for specific performance, together with or separately from;

(iii) the rights, powers and remedies available to the Council under the Act.

(b) The Council may delegate any of its functions including the rights under 5.2(a) to any Public Authority or person.

5.3. COSTS

(a) The Owner shall on demand pay to the Council, all monies, costs, charges and expenses incurred or expended by the Council respectively by reason of a Default Event caused by the Owner which includes the exercise or attempted exercise by the Council of the rights, powers and authorities of the Council under this Agreement and the Act.

(b) If the Owner becomes liable to pay any amount of money to the Council pursuant to this Agreement, including costs incurred in the rectification or a Default Event, the Owner shall pay on demand to the Council, respectively, interest on that amount from the due date for payment but excluding the date of payment of repayment.

(c) Any interest is to be paid under this clause is to be calculated daily, and is to be at 2% higher than the percentage rate payable on judgment debts pursuant to regulation 4 of *the Civil Judgements Enforcement Regulations 2005* (WA).

6. RISK AND INDEMNITY

6.1. 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, Conservation Works, Interpretation Works or Maintenance of the Land or the Place. Without limitation, all Development, Conservation Works, Interpretation Works and Maintenance of the Land or the Place shall be conducted entirely at the risk of the Owner.

6.2. RELEASE AND INDEMNITY

The Owner releases and indemnifies and will keep released and indemnified, the Minister, the Crown, the Council from and against all actions, claims, writs, proceedings, suits, demands, losses, damages, compensation, costs of remediation, legal costs, charges and expenses whatsoever which at any time may be brought, maintained or made against the Minister, the Crown, the Council arising from or relating to the Development, Conservation Works, Interpretation Works, Maintenance or occupation of the Land or the Place by the Owner or any person acting through, on behalf of, or under the direction of the Owner.

7. DISPUTE RESOLUTION

(a) A party must not commence proceedings in any court or tribunal in respect of a dispute unless it has first complied with the provisions of paragraphs (b) to (d) below.

(b) A party claiming a dispute has arisen must provide written notice to the other party to that dispute, giving details of the dispute.

(c) For 30 days after receipt of notice given under 8(b) (or such longer period as may be agreed in writing by the parties to the dispute) each party to the dispute must act in good faith and use its best endeavours to resolve the dispute.

(d) If the parties to the dispute do not resolve the dispute between themselves under paragraph 8(c) within those 30 days, any one or more of them may notify the other party (or parties) to have the State Administrative Tribunal resolve the dispute pursuant to section 101 of the Act.

8. GST

8.1. APPLICATION

For the avoidance of any doubt, this clause only applies to supplies under this Agreement including, but not limited to, any supply by way of reimbursement for rectification works under clause 5.2.

8.2. CONSTRUCTION

In this clause 8:

(a) unless there is a contrary indication, words and expressions which are not defined in this Agreement but which have a defined meaning in the GST Law have the same meaning as in the GST Law; and

(b) GST Law means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

8.3. CONSIDERATION GST EXCLUSIVE

Unless otherwise indicated, all consideration, whether monetary or non-monetary, payable or to be provided under this Agreement is exclusive of GST (GST-exclusive consideration).

8.4. PAYMENT OF GST

If GST is payable on any supply made by:

(a) a party; or

(b) an entity that is taken under the GST Law to make the supply by reason of the capacity in which a party acts,

(**Supplier**) under this Agreement, the recipient of the supply, or the party providing the consideration for the supply, must pay to the Supplier an amount equal to the GST payable on the supply.

8.5. TIMING OF GST PAYMENT

The amount referred to in clause 8.4 must be paid in addition to and at the same time and in the same manner (without any set-off or deduction) as the GST-exclusive consideration for the supply.

8.6. TAX INVOICE

The Supplier must deliver a tax invoice or an adjustment note to the recipient of a taxable supply before the Supplier is entitled to payment of an amount under clause 8.4.

8.7. ADJUSTMENT EVENT

If an adjustment event arises in respect of a supply made by a Supplier under this Agreement, any amount that is payable under clause 8.4 will be calculated or recalculated to reflect the adjustment event and a payment will be made by the recipient to the Supplier or by the Supplier to the recipient as the case requires.

However, the Supplier is not required to make any payment to the recipient if, at the time the payment would otherwise be required, a time limit has expired or there is another limitation preventing the supplier from being entitled to claim, or from claiming a corresponding credit or refund in respect of that payment.

9. NOTICES

9.1. FORM OF NOTICES

Any notice, report or other communication which must be given, served or made under or in connection with this Agreement:

(a) must be in writing in order to be valid;

(b) is sufficient if executed by the Party or on such Party's behalf by any officer, director, attorney or solicitor having the authority to so act for such Party;

(c) is sufficient, in the case of the Owner's obligations under clause 3.6, if executed by the relevant consultant appointed pursuant to clause 3.5;

(d) shall be deemed to have been duly served, given or made in relation to a person if it is delivered or posted by prepaid post to the address, or sent by facsimile or sent by email to the address of that person identified in clause 6.2 or at such other address or number as is notified in writing by that person to the other Parties from time to time; and

(e) shall be deemed to be served, given or made:

(i) if delivered by hand, on delivery;

(ii) if sent by prepaid post, on the second day after the date of posting;

(iii) if sent by facsimile, on receipt of a transmission report confirming successful transmission; and

(iv) if sent by email, on receipt of confirmation of successful delivery.

9.2. ADDRESS FOR NOTICES

The details of each Party for the purposes of giving notice are as follows:

(a) the Council:

Heritage Council of Western Australia
Locked Bag 2506
Perth WA 6001
Phone: (08) 6551 8002

Email: info@dplh.wa.gov.au.

ATTENTION: Director, Historic Heritage Conservation

(b) the Owner as detailed at Item 3 of the Schedule or for any subsequent owner the address noted by the Registrar or as notified to the Council.

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10. GENERAL

10.1. 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.

10.2. FURTHER ASSURANCES

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

10.3. EXTENSION OF TIME

The Council acting at its discretion and by written notice to the Owner, may extend any time period for performance by the Owner of any of its obligations under this Agreement.

10.4. NO WAIVER

Any failure to enforce this Agreement or any forbearance, delay or indulgence granted by one party to the other party will not be construed as a waiver of any rights, privileges or immunities created under this Agreement.

10.5. SEVERABILITY

If a condition, covenant or stipulation of this Agreement or the application of them to a person or circumstances is, or becomes, invalid or unenforceable the remaining covenants, conditions and stipulations are not to be affected by the invalidity or enforceability, and each covenant, condition and stipulation of this Agreement will be valid and enforceable to the fullest extent permitted by law.

10.6. NO ASSIGNMENT

The Owner must not assign its rights under this Agreement without the prior written consent of the Council, which consent may be withheld in the absolute discretion of the Council.

10.7. NO COUNTERPARTS

For the purposes of certification by the Minister and registration by the registrar, the parties agree this Agreement must not be executed by counterparts.

10.8. WAIVER

A provision of, or a right created under, this Agreement may not be waived except in writing signed by the party granting the waiver.

10.9. VARIATION TO BE IN WRITING

No variation of this Agreement (excluding extensions of time pursuant to clause 10.3) shall be effective unless and executed by all parties including being certified by the Minister.

10.10. SPECIAL CONDITIONS

The provisions of this Agreement shall be subject to the Special Conditions, if any, set out in item 11 of the Schedule.

SCHEDULE

ITEM	TERM	DEFINITION
1.	**Land**	Lot 32 on Plan 543 being the whole of the land comprised in Certificate of Title Volume 2230 Folio 198. .
2.	**Place**	Oldham Residence (HCWA Place No. 8091), located on 11 Saladin Street, Swanbourne, Western Australia, 6010, and consists of: (a) the Land; (b) all buildings, structures and works on the Land from time to time; and (c) any thing in connection with the Land, entered or deemed to be entered in the Register.
3.	**Owner**	[redacted]
4.	**Conservation Plan**	*11 Saladin Street, Swanbourne, The Oldham House Conservation Plan,* prepared by Erickson & Taylor, 2008. *Lot 31 & Lot 32 Saladin Street, Swanbourne, Design Guidelines, v1* prepared by Hocking Heritage + Architecture in March 2025.
5.	**Conservation Works**	Not applicable.
6.	**Significant Fabric**	The Significant Fabric is specified in section 4 of the Conservation Plan at pages 178 to 187.
7.	**Maintenance**	Not applicable.
8.	**Interpretation Plan**	Not applicable.
9.	**Interpretation Works**	Not applicable.
10.	**Insurance Amount**	Full replacement value of all improvements and Significant Fabric located on the Land.
11.	**Special conditions**	See Special Condition 11.1.

11.1 Compliance with Design Guidelines

(a) The document titled *Lot 31 & Lot 32 Saladin Street, Swanbourne, Design Guidelines, v 1,* prepared by Hocking Heritage + Architecture in March 2025 ('Design Guidelines') is hereby incorporated into this Agreement.

(b) The Design Guidelines may be amended from time to time with the prior written consent of the Council.

(c) The Owner must not undertake any Development on the Land that is inconsistent with the approved Design Guidelines.

(d) A breach of any of the above conditions constitute a contravention of section 129 of the Act.

EXECUTED AS A DEED

SIGNED for and on behalf of the)
HERITAGE COUNCIL OF WESTERN)
AUSTRALIA:)

Signature

DARREN FOSTER

Name of signatory, Chair, Heritage Council of Western Australia

Signature

KRISTI CLARKE

Name of signatory, Assistant Director General of Department of Planning, Lands and Heritage

SIGNED for and on behalf of [redacted]
)

[redacted]

CERTIFICATE UNDER SECTION 90

OF THE HERITAGE ACT 2018 (WA)

I, the Hon. Simone McGurk MLA, Minister for Heritage, hereby certify that this Agreement is necessary for the purposes of, and complies with, the *Heritage Act 2018* (WA).

Dated the 10 day of September 2026

Simone McGurk MLA

Minister for Heritage