

Heritage Council of Western Australia

and

[REDACTED]

and


[REDACTED]

HERITAGE AGREEMENT

Castledare Boys' Home (fmr), Wilson



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for Commissioner of State Revenue

HERITAGE AGREEMENT
Castledare Boys Home (fmr), Fern Rd, Wilson

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

1. **HERITAGE COUNCIL OF WESTERN AUSTRALIA** of 108 Adelaide Terrace, East Perth, (the "Council");
2. 
3. 

RECITALS:

- A. Trustees of the 
- B.  has entered into a contract of sale with the  in Western Australia Inc.
- C. The Place is entered in the Register of Heritage Places on an interim 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;

"**Conservation Works**" means the conservation works set out in Item 5 of the Schedule;

"**Construction Completion Date**" means:

- (a) in the case of short term works as described in Annexure A, the date 12 months after the Effective Date of this Agreement;
- (b) in the case of medium term works as described in Annexure A, the date 36 months after the Effective Date of this Agreement; and
- (c) in the case of long term works as described in Annexure A, the date 60 months after the Effective Date of this Agreement.

"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 in writing;

"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];
- (b) any other owners of the Land, "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 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 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, undertake the conservation of the Place:
 - (1) as recommended by the Conservation Plan;
 - (2) by the completion of the Conservation Works,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 anything on or in relation to the Place which adversely affects the cultural heritage significance or characteristics of the Place,except as permitted by this clause or as otherwise approved by the Council.

3.2 Conservation Consultant

- (a) The Owner must appoint a consultant approved by the Council to supervise the Conservation Works, and must commission the consultant to provide the Council with written progress reports detailing the Conservation Works which have been completed.
- (b) The written progress reports must be submitted to the Council (a) within one month of the end of each financial year during the Construction Period, and (b) within one month of completion of the Short Term, Medium Term and Long Term Conservation Works as defined in this agreement.

3.3 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.

3.4 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 government 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), the 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.

Part 7

Indemnity and Liability of [REDACTED]

- 7.1 [REDACTED] must do any and every thing that the Owner must do at any time and from time to time under the provisions of this agreement notwithstanding that [REDACTED] is not the registered proprietor of the land at that time.
- 7.2 [REDACTED] shall not do anything that the Owner is prohibited by the terms of this agreement from doing at any time or from time to time notwithstanding that [REDACTED] is not the registered proprietor of the land at that time.
- 7.3 [REDACTED] agrees to indemnify and keep indemnified the [REDACTED]; [REDACTED] against any loss or damage of any kind or any claims or liability of any kind to any person arising from a breach of the provisions of either of clauses 7.1 or 7.2 by [REDACTED].

The Schedule

Item 1:

The Place

Castledare Boys' home (fmr) situated at 100 Fern Road, Wilson, which consists of the Land described in Item 3 and the works and buildings on it

Item 2:

Significant Fabric

The whole of the Place

Item 3:

Land

Those portions of Lots 62, 63 and 64 on Plan 2461 (sheet 2), being part of the land comprised in Certificate of Title volume 1302 Folio 898 as are defined in Heritage Council of Western Australia survey drawing No. 4579

Item 4:

Conservation Plan

"Conservation Plan: Former Castledare Boys Home" prepared by Allom Lovell Hocking Conservation Consultants, June 1996.

Item 5:

Conservation Works

Schedule of works annexed to this agreement as Annexure A, which Schedule includes the classification of works as "Short Term", "Medium Term" and "Long Term".

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

CHAIRMAN
Office held

IAN BAXTER
Name of authorised person

MAURICE ANTHONY OWEN
Name of authorised person

THE COMMON SEAL OF [REDACTED] IS
[REDACTED] ED WAS AFFIXED BY AUTHORITY
[REDACTED] OF THE BOARD AND IN THE PRESENCE OF
[REDACTED]
[REDACTED] in the presence of [REDACTED]

Name (please print) [REDACTED]
SIGNED
by [REDACTED]

in the presence of: AS DULY AUTHORISED SEALHOLDERS
FOR THE TIME BEING
[REDACTED] [REDACTED]

Witness

Name (please print)
SIGNED
by [REDACTED]

in the presence of:
[REDACTED] [REDACTED]

Witness

Name (please print)

CERTIFICATE UNDER SECTION 32 OF THE HERITAGE OF WESTERN AUSTRALIA ACT 1990

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 15th day of OCTOBER 1997



MINISTER FOR HERITAGE

| Conservation Works | Short Term | Medium Term | Long Term |
|---|------------|-------------|-----------|
| <u>INTERIOR</u> | | | |
| <u>Various</u> | | | |
| Investigate ceiling lathe and plaster ceilings and repair as required | ✓ | | |
| Remove fluorescent light fittings, anticipate PCBs | ✓ | | |
| Remove all floor coverings over timber floors | ✓ | | |
| Note possible asbestos in vinyl floors to Drawing Room and elsewhere | ✓ | | |
| Refurbish timber floors with oiled and waxed floor finishes | ✓ | | |
| <u>Drawing Room (Room 1)</u> | | | |
| Refurbish joinery | ✓ | | |
| Reinstate fanlights and window and door hardware | ✓ | | |
| Replace fireplace surrounds | ✓ | | |
| Reinstate fireplace and hearth | ✓ | | |
| Remove exposed electrical cabling, chase in as necessary | ✓ | | |
| Install appropriate light fittings | ✓ | | |
| Wall paper and paint as appropriate | ✓ | | |
| <u>Study & Bedrooms (Rooms 2, 3 & 4)</u> | | | |
| Remove washbasins and plumbing | | ✓ | |
| Further works as per Room 1 | | ✓ | |
| <u>North Rooms (Rooms 5, 6 & 7)</u> | | | |
| Adapt stud walls between Rooms 5 & 6 and 6 & 7 as required | | ✓ | |
| Refurbish all original doors and windows, including hardware | | ✓ | |
| Further works as per Room 1 | | ✓ | |
| <u>Hall Way</u> | | | |
| Reinstate west door and statue to niche | ✓ | | |
| Further works as per Room 1 | ✓ | | |
| <u>Rooms 8 & 9 and Kitchen</u> | | | |
| Retain and refurbish Cool Room | | ✓ | |
| Remove floor finishes | | ✓ | |
| Reinstate joinery | | ✓ | |
| Reinstate window and door hardware | | ✓ | |
| Paint walls and ceiling | | ✓ | |
| Replace floor finishes as appropriate | | ✓ | |
| <u>Rooms 10-14</u> | | | |
| Adapt as required for future uses | | | ✓ |
| Adapt toilets in southern wing | | | ✓ |

| Conservation Works | Short Term | Medium Term | Long Term |
|--|------------|-------------|-----------|
| Further works as per Rooms 8 & 9 & Kitchen | | | ✓ |
| <u>Room with Staircase</u> | | | |
| Replace missing stair balusters | | ✓ | |
| Remove carpet from stairs | | ✓ | |
| Refurbish cupboard under stairs | | ✓ | |
| Refurbish cedar lining over and around stairs | | ✓ | |
| Reconstruct west wall as appropriate | | ✓ | |
| Further works as per Rooms 8 & 9 and Kitchen | | ✓ | |
| <u>Attic</u> | | | |
| Clean up | | | ✓ |
| Restore existing floors, walls, ceiling and built in furnishings | | | ✓ |
| Remove door to dormer | | | ✓ |
| <u>Belvedere</u> | | | |
| Clean up | | | ✓ |
| Replace wall linings where missing | | | ✓ |
| Replace damaged ceiling | | | ✓ |
| Replace glazing where cracked or missing and reputty all glazing | | | ✓ |
| Provide new floor covering as appropriate | | | ✓ |
| <u>Roof Space</u> | | | |
| Remove debris from roof space and clean | ✓ | | |
| Collect and store interpretive material | ✓ | | |
| <u>EXTERIOR</u> | | | |
| <u>External Walls</u> | | | |
| Remove paint to external walls | | | ✓ |
| Repoint external brick walls | | | ✓ |
| Repair all window and door frames, including sashcords and hardware/ furniture | | ✓ | |
| Reglaze windows and French doors | | ✓ | |
| Replace flyscreen doors and windows | | ✓ | |
| Replace lead lighting in front door | ✓ | | |
| Remove intrusive doors and windows on north side | | | ✓ |
| Reinstate original openings and opening treatments on north side | | | ✓ |
| Remove compressor housing from north verandah | | ✓ | |
| Repair and stabilise chimney south side | ✓ | | |
| Investigate exterior colour scheme | | ✓ | |
| Replace west facade in character with original | ✓ | | |
| Provide appropriate external lighting | | ✓ | |

| Conservation Works | Short Term | Medium Term | Long Term |
|---|------------|-------------|-----------|
| <u>External Roof</u> | | | |
| Assess roof condition and repair/replace as necessary with galvanised iron | ✓ | | |
| Refurbish decorate gable elements | | ✓ | |
| Refurbish dormer, replace non original | | ✓ | |
| Refurbish rooflights | ✓ | | |
| Refurbish/reinstate belvedere windows | ✓ | | |
| Refurbish/reinstate external timber work and roof | ✓ | | |
| Remove kitchen flues | | ✓ | |
| <u>Garden</u> | | | |
| Remove garden retaining wall around verandah | | ✓ | |
| Lower soil level in garden | | ✓ | |
| Remove bitumen from garden | | ✓ | |
| Reinstate period garden | | ✓ | |
| <u>Verandah</u> | | | |
| Repair stonework & stairs | ✓ | | |
| Remove paint from stairs | ✓ | | |
| Repair and refinish stairs | ✓ | | |
| Remove concrete floor and fill to verandah | | ✓ | |
| Remove brick bases to verandah posts | | ✓ | |
| Lay timber boarding to verandah floor | | ✓ | |
| Extend verandah posts | | ✓ | |
| Reinstate decorate timberwork to verandah | | ✓ | |
| Replace all roof drainage | ✓ | | |
| Repair/replace verandah roof with galvanised iron | ✓ | | |
| Refurbish lunette over entry | ✓ | | |
| Remove verandah enclosure south side | | ✓ | |
| Reinstate verandah on west side when Dining Room removed | ✓ | | |
| <u>MARIAN SHRINE</u> | | | |
| Deconstruct shrine and relocate on approved site | | ✓ | |
| Provide electricity supply to shrine | | | ✓ |
| <u>INTERPRETATION</u> | | | |
| Use part of <i>Niana</i> , the original homestead, (preferably one of the large rooms and/or the attic) as an interpretive facility focussing on the significance and history of Castledare Boys Home, including where possible copies of original documentation such as drawings and photographs of the home, and any materials found in the archaeological investigation. | | | ✓ |
| <u>INTERPRETATION THEMES</u> | | | |
| Physical Environment | ✓ | | |

| Conservation Works | Short Term | Medium Term | Long Term |
|-----------------------------|------------|-------------|-----------|
| Aboriginal/Pre European | | ✓ | |
| First Settlers | ✓ | | |
| Establishment of Castledare | ✓ | | |
| Social History | ✓ | ✓ | |
| Organisational History | ✓ | | |
| Physical Artefacts | ✓ | ✓ | ✓ |
| Physical Recording | ✓ | | |
| Research Possibilities | | ✓ | ✓ |