

CAPITAL AGREEMENT

THIS AGREEMENT is made the eighteenth day of May, 1987.
between THE HONOURABLE CAROLINE JENNIFER HOGG Minister for Community Services
for and on behalf of the State of Victoria ("the State") of the one part
and City of St Kilda of Brighton Rd., St Kilda
("the Organisation") of the second part.

WHEREAS

- A. The State is desirous of making money available to municipalities and community organisations for the purpose of establishing new child care centres which meet certain criteria.
- B. The Organisation is an "eligible organisation" within the meaning of that expression in this Agreement.
- C. The Organisation has made application to the State for a grant of money to meet the capital cost of a project consisting of
..... Property at
..... 17 Eildon Rd., St Kilda West which
is to be used permanently by or on behalf of the Organisation for or in connection with a child care centre ("the Centre") and which has been approved by the Minister as an approved project.

NOW BY THIS AGREEMENT, in consideration of the premises and of the grants of monies at any time made or agreed to be made by the Minister on behalf of the State to the Organisation as hereinbefore provided, it is hereby agreed between the parties as follows :-

Definitions

1. (1) In this Agreement, unless the contrary intention appears -
'approved project' means the construction or alteration or proposed construction or alterations of a building approved by the Commonwealth Minister for Community Services and the Minister for Community Services Victoria.

'capital cost', in relation to an approved project means such amount as the Minister is satisfied is the cost of the approved project;

'child care' means the care of pre-school aged children at a time or times during the day when they are not being cared for in their own homes or in the homes of other persons;

'child care centre' means a place where child care is provided for children;

'eligible organisation' means -

- (a) an organisation (other than an organisation conducted or controlled by, or by persons appointed, by the Government of the Commonwealth or of a State) that is carried on otherwise than for the purpose of profit or gain and is determined by the Minister to be an eligible organisation for the purposes of this Agreement; or
- (b) a local government authority; or
- (c) the trustees for the time being under a trust established for charitable or benevolent purposes, being a trust in relation which the Minister has determined that the trustees constitute an eligible organisation for the purposes of this Agreement;

and includes -

- (d) the trustee or trustees under a trust established by an organisation referred to in paragraph (a) of this definition or by a local government authority; and
- (e) a corporation established by such an organisation or by a local government authority.

'the Minister' means the Minister of State for the time being administering the Community Welfare Services Act 1970 and includes any Minister for the time being acting for and on behalf of that Minister;

'the Responsible Commonwealth Minister' means the Commonwealth Minister for the time being administering the Child Care Act 1972, and any Minister for the time being acting for and on behalf of that Minister.

Application of Monies

2. The Organisation shall apply the monies granted to it in respect of the Centre for the purpose of meeting the capital cost of the approved project in respect of which the grant is made and for no other purpose.

Conformity with Approved Project

3. Where a grant is or is to be made to the Organisation in respect of an approved project which consists of or includes the construction or alterations or proposed construction or alteration of a building or other improvement on land, the Organisation will :
 - (a) commence on the construction or alteration not later than the time approved by the Minister therefore on advice of the designated construction authority;
 - (b) carry on and complete the construction or alteration with all reasonable expedition to the satisfaction of the Minister on advice of the designated construction authority;
 - (c) ensure that the construction or alteration is carried out in accordance with the plans relating thereto that have been approved by the Minister on advice of the designated contributing authority; and
 - (d) upon completion of the construction of the approved project the child care centre becomes operational within 6 months or a longer time deemed reasonable by the Minister and the responsible Commonwealth Minister.
4. (1) The Organisation agrees to retain its status as an eligible Organisation for the duration of this Agreement.
 - (2) The Organisation shall not at any time, without the consent in writing of the Minister, act in a manner in relation to the provision or operation of the Centre that constitutes a material variation of or substantial departure from the basic concept of the Centre as accepted by the Responsible Commonwealth Minister in approving the project used or to be used for or in connection with the Centre as an approved project and in determining the basis for the grant of monies in respect of the approved project.

Security

5. Before a grant to which this agreement relates is made, the Organisation shall provide such security for compliance with this Agreement as has been required by the Minister prior to the execution of this agreement by the Organisation.

Notification of Other Assistance

6. The Organisation shall forthwith notify the Ministers in writing in the event that a payment is made at any time by any government authority or any person as assistance towards meeting the capital cost of an approved project to which this agreement relates.

Conduct of Child Care Centres

7. (1) The Organisation shall ensure that the Centre :
 - (a) is established and conducted in compliance with all requirements, standards and conditions required by all relevant governmental and semi-governmental authorities, by all planning and zoning public utility boards and by all relevant Federal, State and Local legislation and bodies;
7. (2) The Organisation shall not cease to conduct the centre as a child care centre unless and until the Minister is satisfied that the Centre has been conducted for a period that is reasonable having regard to the amount of grants made by the State and the Commonwealth in respect of the Centre and that there is no longer a community need for the continued operation of the Centre, at which time further compliance with the agreement would not be required.
7. (3) The Organisation shall maintain equipment at the child care centre to a standard imposed by or under State law.
7. (4) The Organisation shall maintain the child care centre in good repair and condition.

Staff, Facilities and other Requirements

8. The Organisation shall further ensure that the Centre, when established and during its operation will :-
- (a) comply with the provisions of the Child Care Act 1972 and the Victorian Child Minding Regulations 1984 in relation to the provision of developmental programs for pre-school aged children attending the Centre, employment of qualified staff and the provision of appropriate support staff;
 - (b) not be conducted in whole or in part for the personal profit or gain of any member of the Organisation; and
 - (c) be operated for the benefit of the community at which it services.

Financial Responsibilities

9. (1) The Organisation shall exercise its best endeavours to ensure that the Centre is operated in a financially responsible manner and on the basis that an even balance will be maintained between income and expenditure.
- (2) The Organisations will ensure that any operating surplus of income over expenditure from the conduct of the Centre is not used to finance any other activity conducted by the Organisation.
- (3) The Organisation shall pay all local authority rates, electricity, gas and water charges in respect of the child care centre.

Records and Books of Account

10. The Organisation shall ensure that proper records and books of account are kept and maintained in relation to the operation of the Centre and shall upon request in writing by the responsible Commonwealth Minister or his delegate arrange for the records, books of account and documents relating to the financial operation of the Centre to be made available for inspection by an authorised representative of the Minister or of his delegate (including the making of such extracts and the making of such copies as the representative considers appropriate) and shall afford all requisite assistance to the representative in carrying out inspections.

Indemnity

11. (a) the organisation shall indemnify and keep indemnified the Commonwealth and the States, their officers, employees, servants and agents against all actions, proceedings, claims and demands whatsoever, that may be brought, made or prosecuted against them or any of them by any person or persons in respect of any action, proceeding, claim or demand arising directly or indirectly out of the making of a grant to the organisation by the State pursuant to this agreement;
- (b) the indemnity shall extend to and include all costs, damages and expenses reasonably incurred by the Commonwealth or the State in defending any aforesaid action, proceedings, claim or demand.

Insurance

12. The Organisation shall ensure that all normal and appropriate insurances of and in respect of the Centre and the conduct of its operations are taken out and maintained in force. The insurance policies and current premium receipts will upon request at any reasonable time be made available for inspection by an authorised representative of the responsible Commonwealth Minister or of his delegate.

Provision of Information

13. The Organisation shall furnish to the responsible Commonwealth Minister or his delegate such particulars relating to the financial operation of the Centre as the responsible Commonwealth Minister or his delegate at any time requests.

Amendment of Constitution Documents

14. The Organisation shall not, without the consent in writing of the responsible Ministers, at any time take any action within its competence to amend its memorandum or articles of association, its constitution, or the terms or provisions of which the Organisation is established as a Trust or otherwise constituted, as the case may be, in a manner that affects or relates to its eligibility to receive a grant or to its compliance with this agreement, and shall in any case inform the Minister in writing of any action taken otherwise than by the Organisation itself that may result or has resulted in such an amendment.

Dealings with Title and Occupation of Centre

15. The Organisation shall not at any time, without the consent in writing of the Ministers, in whole or in part demolish, rent, sell or otherwise dispose of, mortgage or encumber in any way, or part with possession or occupation of, the whole or any portion of the Centre or the land on which the Centre is situated or is to be erected.

Inspections

16. The Organisation shall at all reasonable times permit the Ministers or their delegates or any persons for the time being acting on behalf of the Ministers or their delegates to enter and inspect the Centre for the purpose of ascertaining whether the provisions of this agreement are being complied with.

Observance of Agreement

17. (1) The Organisation shall not except with the written consent of the Minister use the child care centre for any other purpose which is incompatible with the operation of a child care centre.

17. (2) If at any time the Minister considers that the Centre is being conducted or operated by the Organisation in a manner that is not or may not be in accordance with the provisions of this agreement, the Minister may request that within such time appropriate in the circumstances as is specified in the request, discussions be held between representatives of the Organisation and representatives of the State concerning the centre.
- (3) The Organisation and the State shall each for its part take appropriate action to have properly informed and mutually responsive discussions on such matters as are reasonably brought forward by either party.
- (4) If the Organisation fails to hold discussions as referred to in sub clause (2) hereof or if having regard to the discussions the Minister is of the opinion that steps should be taken or changes made in the conduct or operation of the Centre in order to ensure compliance by the Organisation with the provisions of this agreement, the Organisation shall with due expedition take such steps or make such changes as are specified in writing by the Minister to the Organisation as being necessary in the circumstances to achieve that compliance.

Breach and Enforcement

18. (1) In the event that the Organisation at any time fails to perform or observe any of its obligations under this agreement, the Minister may, by notice to the Organisation -
- (a) require the Organisation to perform or observe the obligation or obligations within such time or times as is specified by the Minister in the notice; or
 - (b) if the failure is not one that in the opinion of the Ministers is capable of remedy or if the Organisation has failed to comply with a requirement of the Minister under paragraph (a), declare sub-clause (2) of this clause to be in effect with respect to the Centre.
- (2) Upon this sub-clause having been declared to be in effect in respect of the Centre -

- (a) the responsible Minister may, appoint a person or body to conduct and manage the Centre and the Organisation will permit, and take and participate in all appropriate action to facilitate, the performance by the appointee of the conduct and management of the Centre including, if so required by the Minister, the transfer of the property in the Centre to another eligible organisation determined by agreement between the Minister and the Organisation or, in the absence of agreement, by the Minister and
- (b) whether or not the Minister has taken action under paragraph (a), the Minister may by notice to the Organisation declare that the whole or such portion as the Minister considers appropriate and is specified in the notice of the monies granted by the State in respect of the Centre to be repayable to the State by the Organisation either by way of lump sum or by instalments and by or at such time or times as the Minister may determine and the amount or amounts so declared to be repayable shall be deemed to be payable by the Organisation in the terms of the notice and recoverable by the State accordingly.
- (3) If the Organisation for any reason ceases to be an eligible organisation under this Agreement or at any time fails to carry out its obligations in respect of an approved project, the Minister may by notice to the Organisation deem the approval of the project for the purposes of the Child Care Act 1972 to have lapsed and thereupon no monies shall be regarded as having been payable or shall be payable by way of grant in respect of the approved project and the Organisation shall, on demand by the Minister, repay to the State all monies that have been paid by way of grant in respect of the approved project.
- (4) The repayment of monies that have become repayable by the Organisation under this clause shall be a charge on the property constituted by the Centre and the Organisation shall execute such instruments and do such other acts as are at any time requested by the Minister for the purpose of better securing the rights of the State under this clause in respect of that property and ensuring the continued operation of the Centre PROVIDED THAT, if the Organisation represents to the Minister that a charge as hereinbefore provided in this sub-clause is not appropriate in the circumstances and offers an alternative security for the repayment of the relevant monies, the

Minister may, if she thinks fit and subject to such conditions as she may specify, accept the alternative security in lieu of the charge hereinafter provided and the Organisation shall in that event comply with any such conditions and take all action on its part necessary to effectuate the alternative security or at any time requisite for its enforcement.

Notices

19. Any notices, demand, consent, requirement, request or other communication to be given or made to the Organisation by the Minister or her delegate under this agreement shall be deemed to have been duly given if it is in writing signed by or on behalf of the Minister or the delegate and is sent by registered mail to the Organisation at its registered office or at the office at which the Organisation is located, as is appropriate to the case, and any notice, request or other communication to be given or made to the State or the Minister or her delegate by the Organisation under this agreement shall be deemed to be duly given or made if it is in writing signed on behalf of the Organisation by the *City Manager, Mr. [REDACTED]* and is sent by registered mail to the Minister.

IN WITNESS WHEREOF this agreement has been executed as at the day and year first above written.

SIGNED on behalf of The State by
The Honourable Caroline Jennifer Hogg
in the presence of :

.....

(appropriate execution clause of the
Organisation is required here)

HEREBY SIGNED on behalf of The Mayor,
Councillors and Citizens of the
City of St.Kilda

.....
Brian [REDACTED] City Manager/Town Clerk

