

Example of Heritage Conservation Easement Agreement under Section 37 of the *Ontario Heritage Act*

CORPORATION OF THE CITY OF LONDON

THIS AGREEMENT made this _____ day of _____ [month] 20____ between _____ (the "Owner") and [name of municipality] (the "Municipality").

WHEREAS:

The Owner is the registered owner of certain lands and premises situated in the [name of municipality] in the County of Middlesex and Province of Ontario (called the "Property"), located at _____ and being composed of Plan _____ Part _____, Reference Plan _____ Parts _____, in the [name of municipality], County of Middlesex; the house currently on this Property is the subject of this Agreement and will be referred to as the "Building".

One of the purposes of the *Ontario Heritage Act*, R.S.O. 1990, c. O.18 is to support, encourage and facilitate the conservation, protection and preservation of the heritage of Ontario;

Pursuant to s. 37(1) of the *Ontario Heritage Act*, the Municipality may pass by-laws providing for the entering into of easements or covenants with owners of real property, or interests therein, for the conservation of buildings of historic or architectural value or interest;

Pursuant to s. 37(3) and (4) of the *Ontario Heritage Act*, such covenants and easements entered into by the Municipality, when registered in the proper land registry office against the real property affected by them, shall run with the real property and may, whether positive or negative in nature, be enforced by the Municipality or its assignee against the Owner or any subsequent owners of the real property, even where the Municipality owns no other lands which would be accommodated or benefited by such covenants and easements;

The Owner and the Municipality desire to conserve the natural, architectural, aesthetic and scenic character and condition of the Building.

Certain exterior and interior elements of the Building contributing to its historical and architectural value as shown or described in Schedule "A" attached to this Agreement as particularly important and worthy of preservation;

To this end, the Owner and the Municipality desire to enter into this Easement Agreement (the "Agreement").

IN CONSIDERATION of the sum of \$2.00 of lawful money of Canada now paid by the Municipality to the Owner (the receipt of which is hereby acknowledged) and for other valuable consideration, and in further consideration of the granting of the easements in this Agreement and in further consideration of the mutual covenants and restrictions hereinafter set forth, the Owner and the Municipality agree to abide by the following covenants, easements and restrictions which shall run with the Property forever.

1. Duties of Owner

1.1 Normal Repairs and Alterations

(1) The Owner shall not undertake or permit any demolition, construction, reconstruction, alteration, remodelling, or any other thing or act which would materially affect the appearance or construction of the items listed in Schedule “A” of this Agreement (the “Heritage Elements”), without a Heritage Alteration Permit (“HAP”). To request the HAP, the Owner must submit a Heritage Alteration Permit Application (“HAP application”) together with necessary plans and specifications to the Municipality. The HAP shall be deemed to have been given upon the failure of the Municipality to respond in writing to the HAP application within 90 days of receiving the application at its address as set out in Clause 11 of this Agreement.

(2) If the HAP is given or deemed to be given under this clause, the Owner, in undertaking or permitting the construction, alteration, remodelling or other thing or act so approved of or deemed to be approved of, shall use the materials specified by the Municipality. The Owner may, without obtaining a HAP, undertake or permit the repair or refinishing of presently existing parts or elements of the Heritage Elements, damage to which has resulted from casualty, loss, deterioration, or wear and tear, provided that such repair or refinishing is not performed in a manner which would materially affect the construction or appearance of the Heritage Elements.

1.2 Insurance

(1) The Owner shall at all times during the currency of this Agreement keep the Building insured against normal perils that are coverable on an all risk policy basis, including fire, in an amount equal to the replacement cost of the building. The Owner shall provide evidence of insurance, completed and certified by its insurance company and deliver it to the Municipality on execution of this Agreement, and thereafter evidence satisfactory to the Municipality of the renewal of insurance shall be delivered to the Municipality from time to time upon request by the Municipality.

(2) If the Owner fails to so insure the Building, or if any such insurance on the Building is cancelled, the Municipality may effect such insurance in accordance with the requirements of section 1.2(1) and any sum paid in so doing shall forthwith be paid by the Owner to the Municipality, or if not, shall be a debt owing to the Municipality and recoverable from the Owner by action in a court of law.

(3) All proceeds receivable by the Owner under the aforementioned insurance policy or policies on the Building shall, upon the written demand and in accordance with the requirements of the Municipality, be applied to replacement, rebuilding, restoration or repair of the Building to the fullest extent possible having regard to the particular nature of the Building and the cost of such work. The Owner's financial liability to replace, rebuild, restore or repair the Building if it has been damaged or destroyed shall not exceed the proceeds receivable by the Owner under the aforementioned insurance policy or policies, provided the Owner has complied with the requirements under clause (1). The Municipality acknowledges and agrees that replacement, rebuilding, restoration or repair of the Heritage Elements shall only be required to the extent that same is reasonably possible.

(4) In the event that the proceeds receivable by the Owner under the aforementioned insurance policy or policies are insufficient to effect a partial or complete restoration of the

building together with the Heritage Elements, the Municipality shall have the privilege, but not the obligation, of contributing additional monies towards the replacement, rebuilding, restoration, or repair costs, in order to effect a partial or complete restoration of the building together with its Heritage Elements provided that the Municipality shall notify the Owner of the Municipality's intention to do so within thirty (30) days after receiving from the Owner:

- (a) the written request for permission to demolish referred in Clause 1.3; or
- (b) the HAP and all plans and specifications for the partial or complete replacement, rebuilding, restoration or repair of the building together with its Heritage Elements;

as the case may be.

1.3 Demolition

The Owner shall notify the Municipality of any damage or destruction affecting the Heritage Elements within seven (7) clear days of such damage or destruction occurring.

In the event that the building is damaged or destroyed and the replacement, rebuilding, restoration or repair of it is impractical because of the financial costs involved or because of the particular nature of the building, the Owner shall, in writing within ten (10) days of the giving by the Owner of notice of such damage or destruction, request written approval of the Municipality to demolish the building and in the event of receiving the written approval of the Municipality, be entitled to retain any proceeds from the insurance hereinbefore mentioned and to demolish the building. Such approval shall be deemed to have been received upon failure of the Municipality to respond in writing to a written request for it within ninety (90) days or such extended time as may be agreed upon. This procedure is in addition to and does not replace the requirements and permissions necessary for demolition of all buildings.

1.4 Reconstruction by Owner

(1) If the Municipality does not grant the written approval to demolish referred to in Clause 1.3 or if the Owner has not requested the written approval to demolish referred to in Clause 1.3, the Owner shall replace, rebuild, restore or repair the Building and its Heritage Elements to the limit of any proceeds receivable under the aforementioned insurance policy or policies on the building and of any additional monies contributed by the Municipality towards the replacement, rebuilding, restoration or repair of the Heritage Elements under the provisions of Clause 1.2 to effect a partial or complete restoration of the Building and its Heritage Elements. The Heritage Elements shall only be restored to the extent that same is reasonably possible.

(2) Before the commencement of such work, the Owner shall, within 120 days following the damage or destruction occurring to the building, submit a HAP application together with all plans and specifications for the replacement, rebuilding, restoration or repair of the Building and the Heritage Elements, to the Municipality. The Municipality shall issue or refuse to issue a HAP within ninety (90) days from receipt of such plans, specifications and HAP application. A refusal by the Municipality to issue a HAP may be based upon choice of materials, unattractive appearance, nonconforming architectural style, or any other ground or grounds, including but not limited to purely aesthetic grounds, and the determination of the Municipality in this regard shall be final. Notwithstanding the foregoing, if it is not reasonably possible to replace, rebuild, restore or repair the Heritage Elements, the Municipality shall not refuse to issue a HAP. On refusal to issue a HAP, the Owner may request the written permission of the Municipality to submit an amended or new HAP application. The Municipality may refuse, grant, or grant only on specified terms, the permission to submit another HAP application.

(3) The Owner shall not commence or cause any restorative work to be commenced on the Building and its Heritage Elements prior to receipt of a HAP and any plans and specifications from the Municipality. The restorative work shall be performed upon such terms and conditions as the Municipality may reasonably stipulate in the permit. If the Owner receives no response to the HAP application, the HAP shall be deemed to have been received ninety (90) days after the HAP application was received by the Municipality.

(4) The Owner shall cause all such work to conform to the approved plans and specifications and terms and conditions stipulated by the Municipality in the HAP.

1.5 Reconstruction by Municipality

(1) In the event that the request to demolish the building is not submitted or is refused pursuant to the provisions of Clause 1.3 and the Owner fails to submit a HAP application together with plans and specifications within 120 days, or if the Owner fails to obtain a HAP, within 210 days of the damage or destruction occurring to the building, the Municipality may prepare its own set of plans and specifications and apply for a HAP for the replacement, rebuilding, restoration or repair of the Building and its Heritage Elements. If the Municipality fails to obtain a HAP within 120 days after the Owner's 120 day time to submit has passed, the Owner may retain the insurance proceeds. If the Municipality does not receive a HAP within 120 days of the Owner's time to obtain a HAP, the municipality shall send a copy of the HAP, together with any plans and specifications it has, to the Owner within ten days of its receipt of the HAP.

(2) The Owner shall have thirty (30) days from receipt of a copy of the HAP and any plans and specifications to notify the Municipality in writing that it intends to replace, rebuild, restore or repair the Building and its Heritage Elements in accordance with those plans and specifications. If the Owner does not so notify the Municipality within the said thirty (30) days, the Municipality may proceed with the replacement, rebuilding, restoration or repair of the building up to the value of any insurance proceeds receivable by the Owner under the aforementioned insurance policy or policies and of any additional amount that the Municipality is prepared to contribute to effect a partial or complete restoration of the Building and its Heritage Elements.

(3) The Owner shall reimburse the Municipality for any expenses incurred by the Municipality hereunder to an amount not to exceed any insurance proceeds receivable by the Owner under the aforementioned insurance policy or policies.

(4) In the event that the Municipality does not submit its own HAP application or does not proceed with the replacement, rebuilding, restoration or repair of the building within ninety (90) days after it becomes so entitled, unless it is prevented from so doing by the action or omission of the Owner or any tenant or agent of the Owner, or by any other factors beyond its control, the Municipality's rights under this clause shall automatically terminate and the Owner shall be entitled to retain the proceeds receivable under the aforementioned insurance policy or policies and/or to demolish the building, subject to such other requirements and permissions necessary to demolish any building.

1.6 Maintenance of the Building.

The Owner shall at all times maintain the Heritage Elements and the Building in as good and sound a state of repair as a prudent Owner would normally do.

2. Approvals

Where any request for approval required under this Agreement is made, the determination of the Municipality may be based upon choice of materials, architectural design, historical authenticity, not limited to purely architectural design or historical grounds, but the Municipality's approval shall not be unreasonably withheld, unless otherwise stated.

3. Remedies

(1) If the Municipality, in its sole discretion, is of the opinion that the Owner has neglected or refused to perform any of its obligations set out in this Agreement, the Municipality may, in addition to any of its other legal or equitable remedies, serve on the Owner a notice setting out particulars of the breach and of the Municipality's estimated maximum costs of remedying the breach. The Owner shall have thirty (30) days from receipt of such notice to remedy the breach or make arrangements satisfactory to the Municipality for remedying the breach.

(2) If within those thirty (30) days the Owner has not remedied the breach, or made arrangements satisfactory to the Municipality for remedying the breach, or if the Owner does not carry out or complete the said arrangements within a reasonable period of time, of which the Municipality shall be the sole and final judge, the Municipality may enter upon the Property and may carry out the Owner's obligations and the Owner shall reimburse the Municipality for any expenses incurred thereby, up to the estimated maximum costs of remedying the breach set out in the aforesaid notice. Such expenses incurred by the Municipality shall, until paid to it by the Owner, be a debt owed by the Owner to the Municipality and recoverable by the Municipality by action in a court of law or in like manner as municipal taxes.

4. Waiver

The failure of the Municipality at any time to require performance by the Owner of any obligation under this Agreement shall in no way affect its right thereafter to enforce such obligation, nor shall the waiver by the Municipality of the performance of any obligation under this Agreement be taken or be held to be a waiver of the performance of the same or any other obligation under this Agreement at any later time. Any waiver must be in writing and signed by the Municipality.

5. Extension of Time

Time shall be of the essence of this Agreement. Any time limits specified in this Agreement may be extended with the consent in writing of both the Owner and the Municipality, but no such extension of time shall operate or be deemed to operate as an extension of any other time limit, and time shall be deemed to remain of the essence of this Agreement notwithstanding any extension of any time limit. Any waiver must be in writing and signed by the Municipality.

6. Use of Building

The Owner expressly reserves for itself, its heirs, executors, representatives, successors and assigns the right to use the Building for all purposes not inconsistent with this Agreement.

7. Inspection of the Property

The Municipality or its duly authorized representatives or agents shall be permitted at all reasonable times to enter upon and inspect the Property and the building upon prior written notice to the Owner of at least 48 hours.

8. Plaque and Publicity

The Owner agrees to allow the Municipality to erect a plaque on the building, in a tasteful manner and at the Owner's sole expense, stating that the Municipality holds a conservation easement on the Property. The Owner also agrees to allow the Municipality to publicize the existence of the easement. The Municipality acknowledges and agrees that the plaque erected on the Building as at the date of this agreement is acceptable to the Municipality.

9. Severability of Covenants

The Owner and the Municipality agree that all covenants, easements and restrictions contained in this Agreement shall be severable, and that should any covenant, easement or restriction in this Agreement be declared invalid or unenforceable, the validity and enforceability of the remaining covenants, easements and restrictions shall not be affected.

10. Notice

Except in the event of an interruption in the postal service, any notices, requests for approval, or grants of approval (collectively referred to as "notice") required under this Agreement shall be delivered in person or sent by pre-paid registered mail addressed to the parties at their respective addresses as set out in Clause 11. In the event that notice is delivered in person, the party receiving the notice shall forthwith acknowledge receipt of same in writing, and in that event, the notice shall be deemed to have been received on the date of such acknowledgement. In the event that a party refuses to sign an acknowledgement of receipt of the notice, the person delivering the notice may swear an affidavit of service, and the notice shall be deemed to have been received on the date of service as set out in such affidavit. In the event that notice is sent by pre-paid registered mail, it shall be deemed to have been received on the fifth business day following the day on which the notice was sent.

11. Address for Notice

The respective addresses of the parties for such purposes presently are as follows:

The Owner:

The Municipality:

[heritage staff contact]
[address of municipality]

The parties agree to notify each other immediately, in writing, of any changes of address from those set out above.

12. Interruption of Postal Service

In the event of any interruption in the postal service, notice may be given to either party at its respective address as set out in Clause 11 either in person or by special courier. The party receiving the notice shall forthwith acknowledge receipt of same in writing, and the notice shall be deemed to have been received on the date of such acknowledgment. In the event that either party refuses to sign an acknowledgment of receipt of the notice, the person delivering the notice may swear an affidavit of service, and the notice shall be deemed to have been received on the date of the service as set out in such affidavit.

13. Transfer

13.1 Owner to Notify Municipality on Transfer

Every person who becomes the Owner of the Property shall give notice to the Municipality within thirty (30) days after becoming Owner.

14. Costs

In the event that a dispute arises between the parties hereto because of this Agreement, each party shall be responsible for its own legal fees, court costs and all other similar expenses which may result from any such dispute.

15. Entirety

This written Agreement embodies the entire agreement of the parties with regard to the matters dealt with in this Agreement, and no understandings or agreements, verbal, collateral or otherwise, exist between the parties except as expressly set out in this Agreement.

16. Covenants to Run with the Property

The covenants, easements and restrictions set out in this Agreement shall be registered on title to the Property by the Municipality and shall run with the Property and ensure to the benefit of and be binding upon the parties hereto and their heirs, executors, administrators, successors and assigns, as the case may be.

17. Headings

The headings in the body of this Agreement form no part of this Agreement, but shall be deemed to be inserted for convenience of reference.

IN WITNESS WHEREOF the parties have set their hands and corporate seals as attested by the hands of their proper signing officers in that behalf.

Schedule "A"

Attached to and forming part of the Easement Agreement between the Owner and the Corporation of the [name of municipality] dated as of the _____ day of _____ 02.

HERITAGE ELEMENTS – (Property's Street Address)

(Attach Photo(s) of General Elevation(s))

The exterior Heritage Elements in this Agreement are not limited to but include the:

(Location and Description of each element – see examples below)

(Attach Photo(s) to illustrate described elements)

- a) On the front and north sides of the house, carved stone lintels above each window;
- b) At the roofline, the wide wood frieze surrounding the house;
- c) In the front, a dormer window set in the roof with decorative woodwork;
- d) Two chimneys at north and south ends of house. It is acknowledged that the chimneys do not continue beyond the roofline.

The interior Heritage Elements in this Agreement include, without limitation, the following:

- a) Vestibule;
- b) Separating the central hallway from the vestibule, a wooden screen with sidelights and transom
- c) In the central hallway, a decorative plaster arch, panelled with elaborate plaster supports cast in a grape design and containing a cast keystone in the shape of a face;
- d) A stairway in the hallway with a newel post and a railing that continues into the hall upstairs;
- e) On either side of the front hallway, six-panel double pocket doors set in archways with semi-elliptical heads;

- f) In the front side rooms, the doorcases and window frame mouldings and panelling below the windows;
- g) In the front side rooms and hallway, cove mouldings;
- h) In the south front side room, a glass window with a cherub's face scratched into the glass.