

HERITAGE EASEMENT AGREEMENT

THIS AGREEMENT dated as of the _____ day of _____, 20_.

B E T W E E N:

[Full name of registered owner as shown on transfer/deed]

(the “**Owner**”)

OF THE FIRST PART,

- and -

THE CORPORATION OF THE TOWN OF CALEDON

(the “**Town**”)

OF THE SECOND PART.

WHEREAS:

1. The Owner is the registered owner of certain lands and premises situated in the Town of Caledon, in the Regional Municipality of Peel, municipally known as [Municipal address], and more particularly described in Schedule “A” attached hereto (the “**Property**”).
2. There is a heritage building (the "Heritage Resource[s]") on the Property that have been designated under Part IV [or Part V] of the *Ontario Heritage Act, R.S.O. 1990, a 0.18* (the "Act") as being of cultural heritage value and interest
3. By clause 37 (1) of the Ontario Heritage Act, R.S.O. 1990, c.O.18 as amended (herein the “**Act**”), the Town is entitled to enter into agreements, easements and covenants with owners of real property, or interests therein, for the conservation of property of cultural heritage value or interest.
4. By sections 37 (3) and (4) of the Act, any covenants and easements entered into by the Town, 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 Town against the owner or any subsequent owners of the real property, even where the Town owns no other land which would be accommodated or benefited by such covenants and easements.
5. The Owner and the Town recognize the heritage significance, character and attributes of the Property as set out in the bylaw designating the Property to be of cultural heritage value or interest (the “Heritage Attributes”) which Heritage Attributes are

described in Schedule "B" attached hereto.

6. The Owner and the Town have the common purpose of preserving the heritage character of the Property through the protection and conservation of its Heritage Attributes.

7. To this end, the Owner and the Town desire to enter into this easement agreement (the "**Agreement**").

THE PARTIES AGREE that in consideration of the sum of Two Dollars (\$2.00) of lawful money of Canada now paid by the Town 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 herein and in further consideration of the mutual covenants and restrictions hereinafter set forth, the Owner and the Town agree to abide by the following covenants, easements and restrictions which shall run with the Property forever.

SECTION 1.0 - PURPOSE

1.1 It is the purpose of this Agreement (herein the "**Purpose**") to ensure that the heritage character of the Property will be preserved in perpetuity as part of the heritage of Ontario. To achieve this purpose, the Owner and the Town agree that the Heritage Attributes will be retained, maintained and conserved by the Owner through the application of recognized heritage conservation principles and practices and that no change shall be made to the Heritage Attributes that will adversely affect the heritage character of the Property as set out in the Heritage Character Statement.

1.2 Any reference in this Agreement to the Property includes the Building.

SECTION 2.0 - HERITAGE CHARACTER

2.1 Statement of Cultural Heritage Value

The Owner and the Town agree that the Statement of Cultural Heritage Value, as outlined in By-law xxxx-xx, explains the heritage significance and character of the Property and that the description of Heritage Attributes comprise the features of the Property that are to be conserved under this Agreement in order to preserve and protect the heritage significance and character of the Property.

2.2 Baseline Documentation Report

The Owner and the Town agree that the photographs, plans, sketches and text comprising the Baseline Documentation Report (or By-law xxxx-xx) the originals or facsimiles of which are on file and may be examined at the head office of the Town and at the Archives of Ontario, accurately depict and describe the appearance, condition and

construction of the Building and its surrounding grounds (including the Heritage Attributes) as of the date of this Agreement. The Baseline Documentation Report (or By-law xxxx-xx) shall be referred to where applicable in determining the respective responsibilities and duties of the Owner and the Town under this Agreement.

[or]

The Town may complete a report depicting and describing the appearance, condition and construction of the Building and its surrounding grounds (including the Heritage Attributes) through photographs, plans, sketches and/or text (the “**Baseline Documentation Report**”). When the Baseline Documentation Report has been completed the Owner agrees to execute an acknowledgment in the Baseline Documentation Report to confirm that it constitutes an accurate depiction and description of the then current appearance, condition and construction of the Building and its surrounding grounds (including the Heritage Attributes). When signed by both the Owner and the Town a completed and signed copy of the Baseline Documentation Report shall be given by the Town to the Owner, an original signed copy will be filed at and may be examined at the head office of the Ontario Heritage Town and an original signed copy will be filed with the Archives of Ontario. When completed and signed by the parties, the Baseline Documentation Report shall be referred to where applicable in determining the respective responsibilities and duties of the Owner and the Town under this Agreement.

SECTION 3.0 - DUTIES OF OWNER

3.1 Maintenance

The Owner shall at all times and, subject to compliance with the requirements of section 3.2 of the Agreement maintain the Building in as good and sound a state of repair as a prudent owner would normally do, so that no deterioration in the present condition and appearance of the Heritage Attributes shall take place except for reasonable wear and tear. The Owner’s obligation to maintain the Building shall require that the Owner undertake such preventative maintenance, repair, stabilization and replacement whenever necessary to preserve the Building in substantially the same physical condition and state of repair as that existing on the date of this Agreement and to take all reasonable measures to secure and protect the Building from vandalism, fire and damage from inclement weather.

3.2 Alterations

The Owner shall not, without the issuance of a Heritage Permit from the Town, undertake or permit any Building demolition, construction, reconstruction, renovation, restoration,

alteration, remodeling, or any other thing or act which would materially affect the condition, appearance or construction of the Heritage Attributes. The Owner may, without the prior written approval of the Town, undertake or permit the repair or refinishing of the Building where damage 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 condition, appearance or construction of the Heritage Attributes and the Heritage Conservation Principles and Practices are applied where applicable.

3.3 Emergencies

Notwithstanding the provisions of section 3.2, the Owner may undertake such temporary measures in respect of the Building as are reasonably necessary to deal with an emergency situation which puts the security or integrity of the Building at risk of damage or occupants of the Building at risk of harm provided that such measures are:

- (a) in keeping with the purpose of this Agreement;
- (b) consistent with the conservation of the Heritage Attributes;
- (c) in compliance with the requirements of the Building Code Act 1992, S.O. 1992, c.23 as amended or re-enacted from time to time; and
- (d) where time permits, the Town is consulted before any such measures are undertaken.

In any case, the Owner shall advise the Town forthwith when it undertakes temporary measures in respect of the Building in an emergency situation.

3.4 Prohibited Activities

The Owner shall not in respect of the Property, except with the prior written approval of the Town:

- (a) allow the planting of trees, shrubs or other vegetation which would have the effect of
 - (i) reducing the aesthetics of the Building or the Property, or
 - (ii) causing any damage.

SECTION 4.0 - OWNER'S RESERVED RIGHTS

4.1 The Owner expressly reserves for itself the right to use the Property and carry out such activities as are not inconsistent with the Purpose of this Agreement and which do not materially adversely affect, directly or indirectly, the Heritage Attributes.

SECTION 5.0 - APPROVALS

5.1 Information To Be Provided

In requesting any approval under this Agreement the Owner shall at its expense provide to the Town such information in such detail as the Town may reasonably require in order to consider and assess the Owner's request (the "**Information**") including without limitation the following:

- (a) plans, specifications and designs for any proposed work;
- (b) materials samples.

5.2 Matters To Be Considered

Where any request for approval required under this Agreement is submitted to the Town, the determination of the Town may be based upon choice of materials, architectural design, historical authenticity, or any other grounds, not limited to purely aesthetic or historical grounds, but the Town's approval shall not be unreasonably withheld, unless otherwise specifically provided for in this Agreement. In considering any request for approval the Town shall be guided by and apply the Heritage Conservation Principles and Practices. In giving its approval, the Town may specify such conditions of approval as the Town considers necessary or appropriate in the circumstances to ensure the conservation of the Heritage Attributes.

5.3 Deemed Approval

Provided that the Owner has first complied with the requirements of section 5.1 to the satisfaction of the Town, any approval required to be obtained from the Town under this Agreement shall be deemed to have been given upon the failure of the Town to respond in writing to a written request for it within sixty (60) days of receiving such request and all of the Information requested by the Town at its address as set out in section 10.1 of this Agreement

5.4 Conditions of Approval

If the approval of the Town is given or deemed to have been given under this Agreement the Owner, in undertaking or permitting the construction, alteration, remodeling, or other thing or act so approved of or deemed to be approved of, shall comply with all of the conditions of approval specified by the Town in its approval including the use of materials and methods specified by the Town in its approval.

5.5 Where Owner is in Default

In the event that the Owner is in default of any of its obligations under this Agreement and, pursuant to section 9.1, the Town has notified the Owner of such default, then the Town may refuse to consider any request for approval submitted by the Owner whether requested before or after such notice of default has been given to the Owner and the deemed approval provisions of section 6.3 shall not apply so long as the Owner is in default.

SECTION 6.0 - INDEMNITY AND INSURANCE

6.1 Indemnity

The Owner shall hold the Town and its employees, officers, agents, contractors and representatives harmless against and from any and all liabilities, suits, actions, proceedings, claims, causes, damages, judgments or costs whatsoever (including all costs of defending such claims) arising out of, incidental to, or in connection with any injury or damage to person or property of every nature and kind (including death resulting therefrom), occasioned by any act or omission of the Owner related to this Agreement, save and except for any such liabilities and claims for or in respect of any act, deed, matter or thing made or done by the Town and its employees, officers, agents, contractors and representatives pursuant to sections 7.4, 8.1 and 9.2 of this Agreement.

6.2 Insurance

6.2.1 The Owner shall deliver to the Town upon the execution of this Agreement a certificate or certificates of the Insurance in a form and with limits satisfactory to the Town, and thereafter evidence satisfactory to the Town of the renewal of the Insurance shall be delivered to the Town at least fifteen (15) clear days before the termination thereof.

6.2.2 If the Owner fails to obtain the Insurance or if the Insurance is cancelled, the Town may effect such Insurance and the premium and any other amount paid in so doing shall forthwith be paid by the Owner to the Town, or if not, shall be a debt owing to the Town and recoverable from the Owner by action in a court of law.

6.2.3 All proceeds receivable by the Owner under the Property Insurance shall, on the written demand and in accordance with the requirements of the Town, 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 Property Insurance. In the event that the Property Insurance proceeds receivable by the Owner are insufficient to effect a partial or complete restoration of the Building, the Town 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 Heritage Attributes provided that the Town shall notify the Owner of the Town's intention to do so within thirty (30) days after receiving from the Owner:

- (a) the written request for permission to demolish referred to in Section 7.0; or
- (b) the Heritage Permit and all plans and specification for the replacement, rebuilding, restoration or repair of the Heritage Elements;

as the case may be.

7.0 BUILDING DEMOLITION OR REBUILDING

7.1 Notice of Damage Or Destruction

In the event of any significant damage to or destruction of the Building the Owner shall notify the Town in writing of such damage or destruction to the Building within ten (10) clear days of such damage or destruction occurring.

7.2 Approval to Demolish

If in the opinion of the Owner the replacement, rebuilding, restoration or repair of the Building which has been damaged or destroyed is impractical because of the financial costs involved or because of the particular nature of the Building, the Owner shall, in writing within forty (40) days of the giving of the notice under section 7.1, request the Town's approval to demolish the Building. In the event that the Town approves or is deemed to approve the demolition of the Building, the Owner shall be entitled to retain any insurance proceeds payable to it as a result of the damage to or destruction of the Building and to demolish the Building.

7.3 Rebuilding By Owner

In the event that either the Owner does not request or the Town does not, acting reasonably, give the approval referred to in section 7.2, the Owner shall replace, rebuild, restore or repair the Building to the limit of any proceeds receivable under the Insurance on the Building and of any additional monies contributed by the Town towards the replacement, rebuilding, restoration or repair of the Building to effect a partial or complete restoration of the Heritage Attributes (in this section 7.0, the "**Work**"). Before the

commencement of the Work, the Owner shall submit all plans, designs and specifications for the Work for its written approval within one hundred and thirty-five (135) days of the damage or destruction occurring to the Building. The Owner shall not commence or cause the Work to be commenced before receiving the written approval of the Town of the plans, designs and specifications for the Work and the Work shall be performed in accordance with the approved plans, designs and specifications and upon such terms and conditions as the Town may stipulate. The Owner shall cause the Work to be commenced within thirty (30) days of its approval by the Town and to be completed within nine (9) months of commencement, or as soon as possible thereafter if factors beyond its control or the scope of the Work prevent completion within nine (9) months.

7.4 Reconstruction By Town

7.4.1 In the event that the Owner does not submit a request to demolish the Building or the request to demolish is refused by the Town and the Owner subsequently fails to submit plans, drawings and specifications for the Work within the period stipulated in section 7.3 which are acceptable to the Town then the Town may at its option prepare its own plans, drawings and specifications for the Work (herein the **“Town’s Plans”**) and shall deliver a set of the Town’s Plans to the Owner. The Owner shall have thirty (30) days from receiving the Town’s Plans to notify the Town in writing that it intends to undertake the Work in accordance with the Town’s Plans. If the Owner does not so notify the Town within the said thirty (30) days, the Town may (but shall not be obligated to) undertake the Work up to the value of any insurance proceeds receivable by the Owner in respect of the Building and of any additional amount that the Town is prepared to contribute to effect a partial or complete restoration of the Heritage Attributes. The Owner shall reimburse the Town for any expenses incurred by the Town in undertaking the Work, including any professional or consulting costs reasonably incurred in connection with the Work to an amount not to exceed any insurance proceeds receivable by the Owner in respect of the damage to or destruction of the Building.

7.4.2 The Owner grants to the Town the right and licence to enter and occupy the Property and the Building or such part or parts thereof that the Town acting reasonably considers necessary or convenient for the Town and its forces to undertake and complete the Work (herein the **“Licence”**). The Licence shall be exercisable by the Town on the commencement of any Work undertaken by the Town and shall terminate

when such Work has been completed.

7.4.3 In the event that the Town does not submit to the Owner the Town's Plans or does not proceed with the Work within sixty (60) days after it becomes so entitled, except where it prevented from so doing by any act or omission of the Owner or any tenant or agent of the Owner, or by any other factors beyond its control, the Town's right to undertake the Work shall automatically terminate and the Owner shall be entitled to retain any insurance proceeds in respect of the damage to or destruction of the Building.

SECTION 8.0 - INSPECTION AND PUBLIC VIEWING

8.1 Inspection

The Town or its representatives shall be permitted at all reasonable times during normal business hours to enter upon and inspect the Property and the Building upon giving at least twenty-four (24) hours prior written notice to the Owner.

SECTION 9.0 - REMEDIES OF TOWN

9.1 Notice of Default

If the Town, in its sole discretion, is of the opinion that the Owner has neglected or refused to perform any of its duties or obligations set out in this Agreement, the Town may, in addition to any of its other legal or equitable remedies, give the Owner written notice setting out particulars of the Owner's default and the actions required to remedy the default. The Owner shall have thirty (30) days from receipt of such notice to remedy the default in the manner specified by the Town or to make other arrangements satisfactory to the Town for remedying the default within such period of time as the Town may specify.

9.2 Town May Rectify Default

If the Owner has not remedied the default or made other arrangements satisfactory to the Town for remedying the default within the time specified in section 9.1, or if the Owner does not carry out the arrangements to remedy the default within the period of time specified by the Town, the Town may enter upon the Property and may carry out the Owner's obligations and the Owner shall reimburse the Town for any expenses incurred thereby. Such expenses incurred by the Town shall, until paid to it by the Owner, be a debt owed by the Owner to the Town and recoverable by the Town by action in a court of law. The provisions of subsection 7.4.2 shall apply with all necessary changes required by the context to any entry by the Town onto the Property to remedy the default.

SECTION 10.0 - NOTICE

10.1 Any notices to be given or required under this Agreement shall be in writing and sent by personal delivery, facsimile transmission (“**Fax**”), or by ordinary prepaid mail to the following addresses:

THE OWNER

[Name]

[Postal Address]

[Contact Name (if corporate owner)]

[Fax Number (if available)]

THE TOWN

The Corporation of the Town of Caledon

6311 Old Church Road

Caledon ON L7C 1J6

Attention:

Fax:

The parties may designate in writing to each other a change of address at any time. Notice by mail shall be deemed to have been received on the fourth (4th) business day after the date of mailing, and notice by personal delivery or Fax shall be deemed to have been received at the time of the delivery or transmission. In the event of an interruption in postal service, notice shall be given by personal delivery or Fax.

SECTION 11.0 - PLAQUE AND PUBLICITY

11.1 The Owner agrees to allow the Town, at its expense, to erect a plaque on the Building or the Property, in a tasteful manner and in such location as the Town may determine, acting reasonably, indicating that the Town holds a heritage conservation agreement on the Property. The Owner also agrees to allow the Town to publicize the existence of the Agreement and the Heritage Attributes in its publications, educational materials and research databases.

SECTION 12.0 - GENERAL

12.1 **Waiver**

The failure of the Town 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 Town of the performance of any obligation hereunder be taken or be held to be a waiver of the performance of the same or any other obligation hereunder at any later time. Any waiver must be in writing and signed by the Town.

12.2 **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 the Town, 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 extension must be in writing and signed by the Town.

12.3 Severability of Covenants

All covenants, easements and restrictions contained in this Agreement shall be severable, and 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.

12.4 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 that may result from any such dispute except where costs are awarded by a court or a tribunal.

12.5 Entirety

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

12.6 Subsequent Instruments

Notice of this Agreement shall be inserted by the Owner in any subsequent deed, lease or other legal instrument by which it transfers either the fee simple title to or its possessory interest in the whole or any part of the Property or the Building provided that such notice shall not be required where the Owner in leasing and licensing premises in the Building retains responsibility for the alteration of any Heritage Attributes forming part of the licensed or leased premises and the tenant or licensee has no authority to alter such Heritage Attributes.

12.7 Notification of Transfer of Title or Possession

The Owner shall immediately notify the Town in the event that it transfers either the fee simple title to or its possessory interest in the whole or any part of the Property or the Building, provided that such notice shall not be required where the Owner, in leasing and licensing premises in the Building, retains responsibility for the alteration of any Heritage Attributes forming part of the licensed or leased premises, and the tenant or licensee has no authority to alter such Heritage Attributes.

12.8 Agreement to Run With The Property

This Agreement shall be registered on title to the Property by the Town, and the covenants, easements and restrictions set out herein shall run with the Property and enure to the benefit of and be binding upon the parties hereto and their heirs, executors, administrators, personal representatives, successors and assigns, as the case may be.

12.9 Priority and Postponement

The Owner shall, at its expense, obtain and register any postponement agreements or other agreements that the Town may require to ensure that this Agreement shall be a first encumbrance on title to the Property in priority to all mortgages, charges, leases and other encumbrances or agreements affecting the Property.

12.10 Assignment

The Town may assign all of its interest in this Agreement to any person in accordance with section 22(3) of the Act. The Town shall not be liable to the Owner for any breach or default in the obligations owed to the Owner under this Agreement committed after notice of the assignment of this Agreement has been given to the Owner.

12.11 Owner Not Liable

No person who is an Owner shall be liable to the Town for any breach of or default in the obligations of the Owner owed to the Town under this Agreement committed after the registration of a transfer by such person of that person's entire interest in the Property to another person, provided that the Owner has delivered to the Town notice of such transfer and an acknowledgement and assumption executed by the new registered owner, acknowledging the priority of this Agreement and the interest of the Town, and assuming the obligations of the Owner under this Agreement.

12.12 Gender, Number And Joint And Several

Words importing the masculine gender include the feminine or neutral gender and words in the singular include the plural, and vice versa. Whenever the Owner comprises more than one person, the Owner's obligations in this Agreement shall be joint and several.

12.13 Headings

The headings in the body of this Agreement form no part of the Agreement

but are inserted for convenience of reference.

IN WITNESS WHEREOF the parties hereto have executed this Agreement effective as of the date first written above.

SIGNED, SEALED AND DELIVERED)

)
)
) **Per:** _____
) **Name:** _____

)
)
) **Per:** _____
) **Name:** _____

)
)
)

) **THE CORPORATION OF THE TOWN OF**
) **CALEDON**

)
)
) _____

) **Mayor**

)
)
) _____

) **Town Clerk**

) *We have the authority to bind the Town.*

)
)
)

) **[If Owner is a corporation]**
) **[LEGAL CORPORATE NAME]**

)
)
) **Per:** _____

) **Name:** _____

) **Title:** _____

) **Per:** _____
) **Name:** _____
) **Title:** _____

)
) *I / We have the authority to bind the Corporation.*

SIGNED, SEALED AND DELIVERED (If Owner is an individual/s)
in the presence of:

Witness: (Please sign on line and print name here)

Witness: (Please sign on line and print name here)

Spousal Consent
[pursuant to the *Family Law Act (Ontario)*]

I, _____, the spouse of the Owner, hereby consent to this Agreement and the easements and covenants provided for herein.
SIGNED, SEALED AND DELIVERED in the presence of:

Witness: I, _____, the spouse of the Owner

DRAFT

SCHEDULE "A"

DESCRIPTION OF THE PROPERTY

Complete legal description (including PIN if available)

DRAFT

SCHEDULE "B"

**HERITAGE CHARACTER STATEMENT AND HERITAGE
ATTRIBUTES**

1. Heritage Character Statement

To be completed

2. Heritage character defining features (Heritage Attributes)

To be completed

DRAFT