

" SAMPLE "

AN AGREEMENT OF PROGRAM PARTICIPATION

for the

CITY OF CORNWALL

HERITAGE PROPERTY TAX RELIEF (REBATE) PROGRAM

This Agreement made this ___ day of _____, 200_

BETWEEN:

_____ hereinafter called the "OWNER" of the First Part

- a n d -

The Corporation of the City of Cornwall hereinafter called the "CITY" of the Second Part.

WHEREAS, the Owner is the registered owner of certain lands and premises situated in the City of Cornwall in the County of Stormont and Province of Ontario, more particularly described in Schedule "A" attached hereto (known as the "Property") and forming a part of this Agreement;

AND WHEREAS, Section 365.2 of the Ontario Municipal Act allows for the creation of a Municipal Heritage Property Tax Relief Program by Bylaw;

AND WHEREAS, such a Bylaw is in support of the objectives of the Ontario Heritage Act to, in part, preserve and enhance/maintain the Province's unique built (and now cultural) heritage;

AND WHEREAS, pursuant to certain clause(s) of City of Cornwall Bylaw No. 202, 2004, being more particularly clause 1.viii.), that identifies the need to enter into an Agreement of Program Participation articulating specific restoration/preservation/maintenance actions through a Heritage Statement;

AND WHEREAS, pursuant to Bylaw No.202, 2004, such Agreement entered into with the City, when registered in the proper land registry office against the real property affected by them, shall run with the real property for such time as the Owner continues to be the registered Owner of the property and may, whether positive or negative in nature, be enforced by the City or its assignee against the owner of the real property, even where the City owns no other lands which would be accommodated or benefitted by such Agreement;

AND WHEREAS, the Owner and the City desire to conserve the natural, cultural, architectural and aesthetic and scenic character and condition of the Property;

AND WHEREAS, a building (the "Building"), located on the Property, contains certain attributes (including exterior and/or interior items) commonly referred to as "Heritage Attributes" which contribute to its cultural, historical and/or architectural value as shown or described in Schedule "B" attached hereto forming part of this Agreement, and based on the property's Designating Bylaw "Reasons for Designation", as particularly important and worthy of preservation and/or maintenance;

AND WHEREAS, the Owner and the City desire to enter into this Participation Agreement (the "Agreement");

NOW THEREFORE, in consideration of the sum of Two Dollars (\$2.00) of lawful money of Canada now paid by the Owner to the City (the receipt of which is hereby acknowledged) and for other valuable consideration, and in further consideration of the granting of the clauses/actions as laid out in this Agreement and in further consideration of the mutual covenants and restrictions hereinafter set forth, the Owner and the City agree to abide by the following covenants and restrictions which shall run with the real property for the duration of the current ownership;

1.0 Duties of Owner

1.1 Preservation and Maintenance of the Building and Real Property

The Owner shall at all times and to the best of his/her/their ability, preserve and maintain the Heritage Attributes, and the Building and Real Property in as good and sound a state of repair as a prudent Owner would normally do in accordance with the Heritage Statement attached hereto as Schedule "C" and forming a part of this Agreement. This is based on the information provided in the original Application for Participation.

1.2 Alterations

The Owner shall not undertake or permit any demolition, construction, reconstruction, alteration, remodeling, or any other thing or act which would materially affect the appearance or construction of Heritage Attributes, without the prior written consent of the Council of the City and based on recommendations from Heritage Cornwall.

1.3 Insurance

- (a.) The Owner shall at all times during the currency of this Agreement, keep the Property 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 City on execution of this Agreement, and therefore evidence satisfactory to the City of the renewal of insurance shall be delivered to the City from time to time upon request by the City.
- (b.) If the Owner fails to duly insure the Property as identified in 1.3 (a), or if any such insurance on the Property is cancelled, for whatever reason, the City shall forthwith cancel all eligibility to the Program and associated financial benefits. The amount of cancelled financial benefit shall be pro-rated from the date of cancellation or lack of the subject insurance for the whole of the tax year within which the insurance lapsed, whichever is deemed appropriate by the City.
- (c.) In the event of reinstatement of appropriate Insurance by the Owner, the City, based on review and recommendation(s) from the Heritage Property Tax Relief Program Review Committee, shall determine whether to grant re-entrance/participation into the Program.
- (d.) In the event of damage to Heritage Attributes, as a result of such occurrences as fire or vandalism, the Owner is responsible to replace, rebuild, restore or repair such Heritage attributes in a timely fashion. The City does acknowledge and agree that replacement, rebuilding, restoration or repair of the Heritage Attributes shall only be required to the extent that same is reasonably possible.

1.4 Demolition

- (a.) The Owner shall notify the City of any damage or destruction affecting the Heritage Attributes within seven (7) clear days of such damage or destruction occurring.

- (b.) 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 City to demolish the Building and in the event of receiving the written approval of the City, 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 City 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 any building by the City.

1.5 Reconstruction by Owner

- (a.) If the City does not grant the written approval to demolish, referred to in Clause 1.4(b) or if the Owner has not requested the written approval to demolish referred to in clause 1.4(b.), the Owner shall replace, rebuild, restore or repair the Building and its heritage Attributes to the limit of any proceeds receivable under the applicable insurance policy or policies on the Building. This is to effect a partial or complete restoration of the Building and its Heritage Attributes. The Heritage Attributes shall only be restored to the extent that same is reasonably possible.
- (b.) Before the commencement of such work, and within 120 days following the damage or destruction occurring to the building, the Owner submit an application for a building permit, together with all plans and specifications for the replacement, rebuilding, restoration or repair of the building and its Heritage Attributes. The Owner agrees that the City may issue or refuse to issue a building permit based upon choice of materials, unattractive appearance, non-conforming architectural style, or any other ground or grounds, including but not limited to purely aesthetic grounds, and the determination of the City in this regard shall be final.
- (c.) The Owner shall not commence or cause any restorative work to be commenced on a Building and its Heritage Attributes prior to receipt of a building permit and any plans and specifications from the City. The restorative work shall be performed upon such terms and conditions as the City may reasonably stipulate in the permit.

2. Approvals

Where any request for approval required under this Agreement is made, the determination of the City may be based upon choice of materials, architectural design, historical authenticity, not limited to purely architectural design or

historical grounds, but the City's approval shall not be unreasonably withheld, unless otherwise stated.

3. Remedies

- (a.) If the City, 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 City 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 City's recommendation(s) for 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 City for remedying the breach.
- (b.) If within those thirty (30) days the Owner has not remedied the breach, or made arrangements satisfactory to the City for remedying the breach, or if the Owner does not carry out or complete the said arrangements within a reasonable period to time, of which the City shall be the sole and final judge, the City may determine to forthwith cancel its obligations with the Owner, both financial and otherwise, with respect to this Program.

4. Waiver

the failure of the City 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 City 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 City.

5. Extension of Time

Time shall be of the essence of this Agreement. Any time limits specified in this Agreement (i.e. Schedule "C") may be extended with the consent in writing of both the Owner and the City, 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 City.

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 and permitted under the City's Comprehensive Zoning Bylaw, being applicable law.

7. Inspection of the Property

The City 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. Severability of Covenants

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

9. 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 10. 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 acknowledgment. In the event that a 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 service as set out in such affidavit. In the event that notice is sent by prepaid registered mail, it shall be deemed to have been received on the fifth business day following the day on which the notice was sent.

10. Address for Notice

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

The Owner: _____

The City: c/o Senior Planner, City of Cornwall Planning/Housing Services
340 Pitt Street, 3rd Floor Justice Building
Cornwall, ON K6J 3P9

Supplemental Notice may be sent, at the discretion of the Department of Planning/Housing Services, to:

Heritage Cornwall:

The Chairman
Heritage Cornwall
c/o City of Cornwall Department of Planning/Housing Services
340 Pitt Street, 3rd Floor Justice Building
Cornwall, ON K6J 3P9

Heritage Property Tax Relief Program Review Committee:

The Chairman
Heritage Property Tax Relief Program Review Committee
c/o City of Cornwall Department of Planning/Housing Services
340 Pitt Street, 3rd Floor Justice Building
Cornwall, ON K6J 3P9

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

11. Interruption of Postal Services

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 10 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.

12. Transfer and Agreement Status

This Agreement shall immediately become null and void upon the Transfer of Ownership of Property. New Agreement(s) would need to be entered into and signed by any and all subsequent Owners to maintain eligibility in the Program.

13. 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.

14. Covenants to Run with the Property only as long as below named person(s) are Registered Owners

The covenants and restrictions set out in this Agreement shall be registered on title to the Property by the City and shall run with the Property and ensure to the

benefit of and be binding only upon the parties hereto as named registered owners(s). With subsequent ownership it is necessary to enter into a new Agreement, as stated in Clause 12.

15. 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 hereto have hereunto set their respective hands and seals.

SIGNED, SEALED AND DELIVERED)
in the presence of:)

Owner

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)
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Owner

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)
THE CORPORATION OF THE
CITY OF CORNWALL

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Phil Poirier
Mayor

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Denise Labelle-Gélinas,
Clerk

Schedule "A"
Legal Description of the Property

Schedule "B"
Description of Heritage Attributes

Attached to and forming part of the Program Participation Agreement between the Owner and the Corporation of the City of Cornwall dated this _____ day of _____, 200_.

HERITAGE ATTRIBUTES

The exterior/interior Attributes identified in this Agreement are not limited to, but include as a minimum, the following, as identified in the "Reasons for Designation" of the Designating Bylaw of the property:

Schedule "C"
Program Participation

Attached to and forming part of the Program Participation Agreement between the Owner and the Corporation of the City of Cornwall dated this ____ day of _____, 200_.

A Heritage Statement for the preservation, restoration and/or maintenance of the Heritage Attributes of the Property, including anticipated completion timelines for specific works.

See Attached