

BY-LAW NUMBER 42-2021

- OF -

THE CORPORATION OF THE CITY OF BRANTFORD

Being a by-law to enact a Heritage Easement over the lands located at 31 or 35 Chatham Street, Brantford, ON, pursuant to the provisions of the Ontario Heritage Act, R.S.O. 1990, c. O.18

WHEREAS the Owner is the registered owner of certain lands and premises known municipally as 31 or 35 Chatham Street, Brantford, Ontario, more particularly described as follows:

FIRSTLY: PART OF LOT 8, S/S CHATHAM ST PLAN CITY OF BRANTFORD, SEPTEMBER 7, 1892 BRANTFORD CITY AS IN A456466; T/W A456466; BRANTFORD CITY SECONDLY: PART OF LOT 8, S/S CHATHAM ST PLAN CITY OF BRANTFORD, SEPTEMBER 7, 1892 BRANTFORD CITY; PART OF LOT 9, S/S CHATHAM ST PLAN CITY OF BRANTFORD, SEPTEMBER 7, 1892 BRANTFORD CITY DESIGNATED AS PARTS 1, 2 & 3, 2R-5607; S/T A512048; BRANTFORD CITY THIRDLY: PART OF LOTS 8, 9, 10, S/S CHATHAM ST PLAN CITY OF BRANTFORD, SEPTEMBER 7, 1892 BRANTFORD CITY AS IN A444626; S/T & T/W A444626 FOURTHLY: PART OF LOTS 8, 9, 10, S/S CHATHAM ST PLAN CITY OF BRANTFORD, SEPTEMBER 7, 1892 BRANTFORD CITY AS IN A368040; S/T & T/W A368040 FIFTHLY: PART OF LOT 11, N/S NELSON ST PLAN CITY OF BRANTFORD, SEPTEMBER 7, 1892 BRANTFORD CITY AS IN A358343; BRANTFORD CITY SIXTHLY: LOT 10, N/S NELSON ST PLAN CITY OF BRANTFORD, SEPTEMBER 7, 1892 BRANTFORD CITY; PART OF LOT 11, N/S NELSON ST PLAN CITY OF BRANTFORD, SEPTEMBER 7, 1892 BRANTFORD CITY AS IN A358344 (FIRSTLY); BRANTFORD CITY SEVENTHLY: PART OF LOTS 9 & 10, S/S CHATHAM ST PLAN CITY OF BRANTFORD, SEPTEMBER 7, 1892 BRANTFORD CITY DESIGNATED AS PART 2, 2R-6747; T/W A512050 AND T/W EASE OVER PART 3, 2R-6747 FOR INGRESS & EGRESS AS IN BC102065 EIGHTHLY: PART OF LOTS 9 & 10, S/S CHATHAM ST PLAN CITY OF BRANTFORD, SEPTEMBER 7, 1892 BRANTFORD CITY DESIGNATED AS PARTS 1 & 3, 2R-6747; T/W A512050 NINTHLY: PART OF LOT 11, N/S NELSON ST PLAN CITY OF BRANTFORD, SEPTEMBER 7, 1892 BRANTFORD CITY AS IN A358344 (THIRDLY); SUBJECT TO AN EASEMENT OVER PART 3, 2R-6747 IN FAVOUR OF PART 2, 2R-6747 AS IN BC102065; CITY OF BRANTFORD, being all of the PIN 32141-0118(LT),

(hereinafter the “Property”); and

WHEREAS, the Owner owns a building of cultural heritage value or interest known as the Crystal Cottage, which is located at the Property, and which has been designated by the City under Part IV of the *Ontario Heritage Act*, R.S.O. 1990, c. O.18 by way of By-law 6-85, registered on title to the Property as instrument number A292747; and

WHEREAS, in accordance with Section 37(1) of the *Ontario Heritage Act*, R.S.O, 1990, c.O.18, the City is entitled to enter into agreements, covenants and easements with owners of real property or interests therein, for the conservation, protection and preservation of the heritage of Ontario; and

WHEREAS, by Sections 37(2) and 37(3) of the *Ontario Heritage Act*, R.S.O. 1990, c.O.18, such covenants and easements entered into by the City, 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 City or its assignee against any subsequent owners of the real property even where the City owns no other land which would be accommodated or benefitted by such covenants and easements; and

WHEREAS the City of Brantford’s Heritage Committee has been consulted on the entering into of a heritage easement for the Property in order to preserve the cultural heritage value of the Property; and

WHEREAS the Owner and the City desire to conserve the cultural heritage value and interest of the Property as described hereto in a manner which will ensure that any existing heritage attribute to be impacted, or lost, as a result of the works described herein does not occur in isolation of the broader enhancements to the cultural heritage value of the Building;

NOW THEREFORE THE MUNICIPAL COUNCIL OF THE CORPORATION OF THE CITY OF BRANTFORD HEREBY ENACTS AS FOLLOWS:

1. That staff be directed to finalize and register a Heritage Easement and Building Relocation Agreement, in the form and with such content as is substantially similar to that attached hereto as Schedule “A” or is otherwise satisfactory to the City Solicitor or designate, against the Property as further described in the first recital hereto.
2. That the City Solicitor or designate be authorized to execute any documents as may be required to give effect to the registration against the Property in the proper land registry office.
3. This by-law shall come into force and take effect on the date of its passing.

READ A FIRST TIME: February 23, 2021
READ A SECOND TIME: February 23, 2021
PASSED: February 23, 2021

MAYOR

CITY CLERK

Schedule 'A' to By-law 42-2021

THIS HERITAGE EASEMENT AND BUILDING RELOCATION AGREEMENT made this _____ day of _____, 2021

B E T W E E N:

THE CORPORATION OF THE CITY OF BRANTFORD

PARTY OF THE FIRST PART

-and-

MARKET STREET DEVELOPMENT INC.

PARTY OF THE SECOND PART

WHEREAS the Owner is the registered owner of certain lands and premises known municipally as 31 or 35 Chatham Street, Brantford, Ontario, more particularly described on Schedule "A" attached hereto; and

WHEREAS, the Owner owns a building of cultural heritage value or interest known as the Crystal Cottage, which is located at the Property, and which has been designated by the City under Part IV of the *Ontario Heritage Act*, R.S.O. 1990, c. O.18 by way of By-law 6-85, registered on title to the Property as instrument number A292747; and

WHEREAS the Owner has applied to the City, pursuant to section 34 of the *Ontario Heritage Act*, R.S.O. 1990, c. O.18, to request consent to remove the Crystal Cottage from the Property and relocate the Crystal Cottage on the property municipally known as 53 Charlotte Street, Brantford, Ontario; and

WHEREAS, the City wishes to ensure that the Property is preserved until such time as the Crystal Cottage is safely relocated and refurbished, in accordance with good conservation practice, as necessary, to the proposed, new location;

WHEREAS, in accordance with Section 37(1) of the *Ontario Heritage Act*, R.S.O, 1990, c.O.18, the City is entitled to enter into agreements, covenants and easements with owners of real property or interests therein, for the conservation, protection and preservation of the heritage of Ontario; and

WHEREAS, by Sections 37(2) and 37(3) of the *Ontario Heritage Act*, R.S.O. 1990, c.O.18, such covenants and easements entered into by the City, 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 City or its assignee against any subsequent owners of the real property even where the City owns no other land which would be accommodated or benefitted by such covenants and easements; and

WHEREAS the City of Brantford's Heritage Committee has been consulted on the entering into of a heritage easement for the Property in order to preserve the cultural heritage value and interest of the Property; and

WHEREAS the Owner and the City desire to conserve the cultural heritage value and interest of the Property and Building as described hereto in a manner which will ensure that any existing heritage attributes to be impacted or lost as a result of the works described herein does not occur in isolation of the broader enhancements to the cultural heritage value or interest of the Building;

NOW THEREFORE, in consideration of the sum of \$2.00, now paid by the City to the Owner (the receipt and sufficiency of which is hereby acknowledged) and for other good and valuable consideration including, without limitation, the granting of the easement herein, and the mutual covenants and restrictions hereinafter agreed to, the Owner and the City agree to abide by the following covenants, easement and restrictions:

ARTICLE 1 **DEFINITIONS**

1.1 For the purposes of this Agreement the following terms shall have the following meanings:

- a) "Act" means the *Ontario Heritage Act*, R.S.O. 1990, c. O.18, as amended, and the regulations thereunder;
- b) "Agreement" means this agreement for the provision of a heritage easement and building relocation agreement;
- c) "Building Removal Report" means the report of Heritagedowntowns.com, dated November 30, 2020 together with a letter from Heritagedowntowns.com titled "Response to Staff Comments on Building Removal Report", dated November

25, 2020, provided by the Owner to the City, all of which are incorporated by reference hereto and form part of this Agreement, and which contain a detailed cost estimate identifying the costs for works required pursuant to this Agreement , including, without limitation, all works associated with preparing, moving, and installing the Building;

- d) “City” means The Corporation of the City of Brantford;
- e) “Crystal Cottage” and “Building” are used interchangeably and mean the building located on the Property as of the date of execution of this Agreement and having attributes of cultural heritage value or interest;
- f) “Easement” means the rights and easements in respect of the Property reserved in Article 4 herein, and includes the schedules attached hereto;
- g) “Engineering Consultant” means a professional engineer who holds a Certificate of Authorization for municipal engineering applications from the Association of Professional Engineers of Ontario, and “Professional Engineer” shall have a corresponding meaning;
- h) “Owner” means the above-named party of the Second Part and, with respect to the Easement only, means any person who at any time after registration of this Agreement becomes the registered owner of the Property or any part thereon or any ownership interest therein, including being a trustee for any beneficial owner of the Property;
- i) “Property” means the lands and premises situate in the City of Brantford and the Province of Ontario, municipally known as 31 or 35 Chatham Street and further described on Schedule “A” attached hereto, which have been designated by the City, pursuant to By-law 6-85, as having cultural heritage value or interest; and
- j) “Relocation Site” means the site selected by the Owner for the relocation of the Crystal Cottage, being 53 Charlotte Street, Brantford.

ARTICLE 2 **PURPOSE**

2.1 The purpose of this Agreement is twofold:

- a) to ensure the preservation of the Property for cultural heritage purposes by way of the transfer of a heritage easement from the Owner to the City;
- b) to ensure the Building currently located on the Property is safely and successfully relocated from the Property to the Relocation Site and restored at the Relocation Site in a manner that ensures the preservation and protection of the cultural heritage value or interest of the Building.

ARTICLE 3 **REPRESENTATIONS AND WARRANTIES**

- 3.1 The Owner represents and warrants that the Owner is the legal, beneficial, and registered owner of the Property with good title thereto.
- 3.2 The Owner represents and warrants that there are no third party interests registered prior to this Agreement on title to the Property or, where such interests exist, that the Owner will, within a reasonable time, obtain any and all postponements of third party interests in the Property, including, without limitation, any interests of mortgagees in the Property registered prior to this Agreement on title to the Property where the City so requires.
- 3.3 The Owner represents and warrants that the Building is of cultural heritage value or interest and desires to ensure the preservation of the Building for these cultural heritage purposes and that the Building Removal Report, in support of the Owner's application for relocation of the Building is complete, up-to-date, and remains so at the time of execution of this Agreement and forms part of the justification for the relocation of the Building to a new site in order to conserve the heritage value or interest of the Building.
- 3.4 In the event of a conflict between this Agreement and the Building Removal Report and any supplemental letters or addendum thereto, this Agreement shall govern.

ARTICLE 4 **GRANT OF EASEMENT**

- 4.1 The Owner hereby reserves an easement to permit the City, its Council, officers, employees, agents, workers and contractors, together with their supplies,

equipment, materials and machinery to enter on and have access to the Property at reasonable times and subject to the requirements below and for the following purposes:

- a) inspection, in order to determine compliance with this Easement;
 - b) to carry out any construction, demolition, maintenance, alteration, repair, improvements, installation, work reconstruction or restoration of the Building reasonably required in the opinion of the City pursuant to this Agreement; and
 - c) for all purposes reasonably necessary or incidental to the exercise of the rights hereby created or related to any of the foregoing purposes.
- 4.2 Prior to entry or access to the Property for the purposes identified in section 4.1, the City shall provide reasonable notice to the Owner as follows;
- a) for the purposes specified in section 4.1(a) verbal notice; and
 - b) for the purposes specified in 4.1(b) at least one day's written notice. The notice under section 4.1(b) shall describe the nature, scope, design, location, timetable and any other material aspect of the activity proposed.
- 4.3 No right of access by the general public to any portion of the Property is granted by this Easement.

ARTICLE 5 **COVENANTS**

- 5.1 The Owner hereby covenants and agrees to at all times maintain the Building in a state of good repair to the standard of a prudent owner so that no deterioration in the Building's condition or appearance takes place, including, without limitation, taking reasonable measures to secure and protect the Building from vandalism, fire and damage.
- 5.2 The Owner further covenants and agrees not develop the Property or otherwise alter the Property in a manner that would destroy or otherwise alter the heritage attributes or the appearance or construction of the Building, with the exception of any activity necessary in order to prepare the Building for relocation to the Relocation Site and expressly permitted pursuant to this Agreement.

- 5.3 Without limiting the generality of section 5.2, above, the Owner shall not:
- a) Buildings and Structures: construct, erect, maintain or allow the construction, erection or maintenance of any new building or structure at the Property;
 - b) Other Easements: grant any easement in, over, on, under or through the Property;
 - c) Subdivision: sever or subdivide the Property; or
 - d) Dumping: dump or allow the dumping of soil, rubbish, ashes, garbage, waste or other materials of any type or description at the Property aside from soil or fill necessary as part of any grading activities at the Property expressly permitted by the City through a site alteration or other applicable permit.
- 5.4 Notwithstanding sections 5.2 and 5.3 above, nothing in this Article shall restrict or limit the Owner from grading or pre-construction activities conducted pursuant to a valid permit or other authorization that would not, in the sole opinion of the City, impact the potential return of the Building to the Property should the proposed relocation contemplated by this Agreement be unsuccessful.
- 5.5 The Owner shall relocate the Building from its current location at the Property to the Relocation Site and shall ensure the following with respect to the relocation of the Building:
- a) prior to the commencement of any relocation work, the Owner shall submit to the City a catalogue of high-resolution photographs of the interior and exterior of the Building which shall function as an archival record of the Building as well as a record of the pre-relocation condition of the Building;
 - b) the relocation shall be monitored by Professional Engineer with appropriate qualifications, acceptable to the City's General Manager of Community Development;
 - c) at least forty-eight hours' notice shall be provided to the City's General Manager of Community Development prior to the relocation;

- d) the relocation shall be performed in accordance with the methodology recommended in the Building Removal Report, incorporated by reference hereto, and overseen by a Professional Engineer having applicable and relevant expertise in order to avoid damage to the Building and surrounding infrastructure;
 - e) the Building shall be properly secured and insured as provided herein;
 - f) the Building shall be inspected by the Professional Engineer both prior to and following the relocation;
 - g) the Owner shall provide a report from a Professional Engineer, following the relocation, certifying that the Building has been properly relocated and that no further work is required to appropriately situate the Building on the Relocation Site and stabilize the Building at this new location; and
 - h) the Owner shall provide the City with an information plaque for installation at the Relocation Site, in a form and with such content as is satisfactory to the General Manager of Community Development for the City.
- 5.6 The Owner shall, upon completion of the relocation of the Building pursuant to this Article, restore the Building to its pre-relocation condition or better to the satisfaction of the General Manager of Community Development for the City.

ARTICLE 6

INSURANCE AND INDEMNITY

- 6.1 The Owner shall, during the term of this Agreement, at its expense, take out and keep in full force and effect the following insurance policies:
- a) **Commercial General Liability Insurance** insuring all obligations, services, operations and work as described in this Agreement. The policy will be extended to include bodily injury, property damage, personal injury and advertising injury, premises and operations, products and completed operations, contingent employers liability, owners and contractor's protective, and blanket contractual to a limit of not less than two million dollars (\$2,000,000) per occurrence and in the aggregate of not less than five million dollars (\$5,000,000). The policy will be endorsed to name the City as an additional insured;

- b) **Non-owned automobile liability insurance** to a limit of not less than two million dollars (\$2,000,000);
- c) **All Risks Property insurance** for loss or damage to the Building and for property for which the Owner is legally liable in an amount not less than the full replacement cost of the cultural heritage value of the Building. The policy will cover the perils of earthquake, flood, collapse, debris and demolition costs and include a permission clause to allow for the additions, alterations or repairs. If required, the policy will be endorsed to provide coverage for buildings in the course of construction.

6.2 All policies of insurance shall:

- a) contain a cross-liability and severability of interest clause, as may be applicable;
- b) be written with an insurer licensed to do business in the Province of Ontario;
- c) provide that at least thirty (30) days prior written notice and ten (10) days in the event of non-payment of premiums shall be given to the City by the insurer before the insurer of the Owner takes any steps to cancel, terminate, fail to renew, amend or otherwise change or modify the insurance or any part thereof;
- d) be non-contributing with and will apply only as primary and not excess to any other insurance or self-insurance available to the City and;
- e) any deductible and self-insurance amounts will be borne by the Owner.

6.3 Prior to the execution of this Agreement, the Owner shall provide proof of Insurance. Proof of insurance shall be on a form of a Certificate of Insurance, signed by an authorized representative of the insurer. The Owner will make available complete certified copies of all applicable insurance policies for examination if required by the City. Certificates of Insurance evidencing renewal or replacement of policies shall be delivered to the City within fifteen (15) days prior to the expiration or replacement of the current policies, without demand by the City. The insurances as set out in 6.1 will be maintained continuously throughout this Agreement and until such time the City terminates this Agreement.

6.4 If the Owner fails to maintain in force any insurance required to be maintained by it hereunder, or if any such insurance is cancelled, then the City, without

prejudice to any of its other remedies, may obtain such insurance on behalf of and at the cost of the Owner.

- 6.5 All proceeds received by the Owner under the property policy of the Building shall, on the written demand and in accordance with the requirements of the City, be applied to the replacement, rebuilding, restoration or repair of the Building to the fullest extent possible having regard to the particular nature of the Building and the heritage value or interest in the Building.
- 6.6 Where a portion of any of the work related to this Agreement is to be carried out by a contractor, the Owner will have the contractor take out the same insurance as provided in 6.1(a) and 6.1(b). The contractor's commercial general liability policy shall contain no exclusions for loss or damage caused by vibration, the removal or weakening of supports, shoring, underpinning or from any other activity or work that may be done in connection with this Agreement. If applicable, the policy will be endorsed to provide hook, hoists and rigger liability coverage. The policy will be endorsed to name the Corporation as an additional insured. In addition, the Owner shall cause the contractor to take out and maintain throughout the term of this Agreement the following additional insurance coverages:
- a) automobile liability insurance in an amount of not less than five million (\$5,000,000) per claim and;
 - b) motor truck cargo insurance including loading and unloading with a limit of not less than the replacement cost of the cultural heritage value of the Building.

The Owner shall forward a copy of their general contractor's certificate of insurance to the City upon the request of the City.

- 6.7 The City reserves the right to require the Owner to purchase such additional insurance coverage as the City may reasonably require. The City reserves the right to request such higher limits of insurance or otherwise alter the types of insurance coverage requirements as the City may reasonably require from time to time. If the Owner maintains higher limits than the minimums above, the City requires and shall be entitled to coverage for higher limits maintained by the Owner. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.

The above insurance requirements will not be read to limit the liability of the Owner and will not be deemed a waiver by the City of its right to damages and indemnity from the Owner for default under this Agreement or for any loss arising out of or related to the performance or non-performance by the Owner of its obligations under this Agreement.

- 6.8 The Owner shall notify the City of any damage or destruction to the Building within ten days of any such damage or destruction occurring. For the purpose of this section, alterations to the Building made in the course of the relocation of that building shall not constitute damage or destruction; however, any impacts to the Building outside of the normal course of the relocation of the building, shall be reported to the City within the timeframe set out herein.
- 6.9 The Owner hereby covenants and agrees to take all steps necessary to ensure the successful relocation of the Building to the Relocation Site and shall at all times act in a prudent manner with the standard of care applicable to the conduct of such delicate work, and shall take out and maintain all permits, authorizations, licenses, etc. necessary and applicable to said move.
- 6.10 Without limiting the generality of section 6.9, before commencing the relocation of the Building or altering the Building in any way, the Owner shall submit to the City all plans, specifications, drawings, reports, studies, professional opinions, and other documents required or requested by the City to satisfy the City that the relocation of the Building can be completed successfully. The Owner shall not commence or permit any relocation work before receiving written approval of the City of the plans and specifications for said work. Such approval shall be deemed to have been received upon the failure of the City to respond in writing to a written request by the Owner for said approval within ninety days of the receipt of such request by the City. The Owner shall cause all relocation work to be commenced within thirty days of the approval by the City of the plans and specifications for said work and shall complete the relocation of the Building and all restoration work to the Building within nine months of the City's approval of same and in strict compliance with the plans and specifications approved of and terms and conditions stipulated by the City.
- 6.11 In the event that the Owner fails to execute the relocation of the Building in accordance with the plans and specifications approved by City, which relocation shall include all site preparation and restoration work necessary to ensure that the Building is structurally sound and restored to its pre-relocation condition or better, the City may, but is not obligated to, draw down on the security provided by the Owner and carry out the obligations of the Owner set out in this Agreement or otherwise required in order to effect the relocation, restoration, or return of the Building to the Property, as the case may be, or exercise any of the remedies set out in this Agreement.
- 6.12 The Owner shall and does hereby indemnify and save harmless the City, its

directors, officers, employees, agents, Mayor, councillors and contractors from and against any and all actions, causes of action, suits, claims, and demands by or on behalf of any person arising out of or occasioned by any act or omission, negligent or otherwise, of the City in any way relating to this Agreement and the rights and approvals granted herein.

ARTICLE 7 **SECURITY**

- 7.1 The Owner shall, prior to the commencement of any of the work contemplated herein, provide the City with an irrevocable standby letter of credit (or other security satisfactory to the Treasurer for the City), which letter of credit or other security shall be in a form satisfactory to the Treasurer for the City in his or her absolute discretion, and which shall be in an amount equivalent to the cost estimate set out in the Building Removal Report and, in any event, shall be not less than \$460,347.88.
- 7.2 The said irrevocable standby letter credit, or other security provided to the City, shall secure the obligations of the Owner to satisfactorily complete all obligations of the Owner and all works required or contemplated by this Agreement, and, in the event of the discontinuance of the relocation of the Building, the restoration of the Building and the Property to its predevelopment/relocation condition.
- 7.3 The irrevocable letter of credit shall be in Canadian funds and drawn on a bank or other financial institution satisfactory to the City Treasurer, and shall contain the following automatic renewal clause:
- IT IS A CONDITION of this Letter of Credit that it shall be deemed to be automatically extended without amendment from year to year from the present or any future expiration date hereof, unless, at least thirty (30) days prior to the present or any future expiration date, The Corporation of the City of Brantford (the "City") notifies you in writing by registered mail that it has elected not to consider this Letter of Credit to be renewable for any additional period. The Letter of Credit may be drawn by the City for completion of any outstanding work, repairs, maintenance or claims, and may be paid to third parties by the City at the City's discretion.
- 7.4 It is agreed by the parties that in the event of notice from the bank upon which the letter of credit is drawn that any letter of credit will not be renewed, the City

may cash the letter of credit immediately, without having to provide justification, and the funds from the letter of credit may be used to complete any outstanding services, works, repairs, maintenance, tests, certifications, or claims and may be paid to third parties at the City's sole discretion. It is further agreed that any transfer of ownership shall not affect the City's right to continue to hold and realize on the said irrevocable standby letter of credit until such time as all works are complete or until a substitute security satisfactory to the Treasurer for the City, in his or her absolute discretion, had been provided to the City.

- 7.5 The securities provided pursuant to this Agreement shall be maintained until such time as all works secured by the securities have been completed to the satisfaction of the General Manager of Community Development for the City. To that end, the Owner shall provide the City with a report and certificates of performance from an Engineering Consultant attesting to the completion of the relocation of the Building to the Relocation Site, the structural stability of the Building, the absence of defects in material workmanship of any restoration work, and confirming that the Building is fit for occupancy.

ARTICLE 8
EVENT OF DEFAULT

- 8.1 In the event of a breach of or default in the obligations and covenants of the Owner under this Agreement, the City may take any action available to it at law, in equity, by statute or under this Agreement provided that the City shall first give to the Owner written notice of the default which notice shall specify the nature of the non-compliance and the measures necessary to secure compliance with the terms of this Agreement. If notice of default is given, the Owner shall have thirty days following receipt of the notice of default to complete the required measures and to rectify the non-compliance or default.
- 8.2 In the event that the Owner has failed to provide compliance within the thirty day period allowed, then the City shall be entitled to enter on to the Property to complete those works and measures necessary to provide compliance and to remedy the default at the expense of the Owner and may draw on the security provided by the Owner pursuant to this Agreement in order to effect any such remedy. Where the security provided is insufficient to remedy the default, such costs of remedy incurred by the City shall be a debt owed by the Owner to the City and shall be a charge upon the Property enforceable in the same manner as municipal taxes and recoverable by the City in a court of law.
- 8.3 If the City, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate damage to the heritage value or interest of the Building or Property, the City may pursue its remedies under this Article without prior notice to the Owner and without waiting for the expiry of the thirty day notice period as otherwise required under section 8.1.
- 8.4 The parties recognize that damages based upon market value may not be adequate or effective for destruction of or restoration of the heritage features of the Building or Property as they existed prior to default or breach of this Agreement. Accordingly, the parties agree that:
- a) compensation to the City in the event of default or breach of this Agreement may be based upon market value, restoration or replacement costs whichever, in the opinion of the City shall better compensate the City; and
 - b) in addition, and without limiting the scope of the other enforcement rights available to the City under this Agreement, the City may bring an action or an application for injunctive relief to prohibit or prevent default or the continuance of default under this Agreement.

ARTICLE 9
NOTICE

9.1 Any notice (which includes any request or waiver) provided or given hereunder shall be sufficiently given by either party if given in writing and delivered by hand, facsimile or other means of electronic communication or mailed by prepaid registered post and delivered

a) to the Owner at:

Fax:
E-mail:

b) and to the City at:

Fax:
E-mail:

9.2 Any notice so delivered or any notice for forwarded by facsimile or other means of communication shall be deemed to have been given on the next business day following the day of delivery or forwarding and any notice to mailed shall be deemed to have been given on the fourth business day following the day of mailing. Either party may, in any manner set out herein, give notice to the other party of any change in the address of fax number thereof and, thereafter, the new address of fax number shall be the address of such party for the purpose of giving notice hereunder.

ARTICLE 10
TERM

- 10.1 Notwithstanding any other provision of this Agreement, the term of this Agreement shall commence as of the date first written above and shall terminate upon the completion of the relocation of the Building and any and all restoration work required to the Building, all of which must be completed to the satisfaction of the City, as well as receipt of the final report of the Professional Engineer set out in section 5.5(g) of this Agreement. Following termination of this Agreement, confirmation of which shall be provided in writing by the City to the Owner, this Agreement may be removed from title to the Property.
- 10.2 In the event that the Building has been successfully relocated but minor repairs to the Building must still be conducted prior to acceptance of the work by the City pursuant to this Agreement, the Easement granted pursuant to Article 4 of this Agreement shall terminate and this Agreement may be removed from title to the Property but shall remain in full force and effect, save and except for Article 4, until such time as all work required by this Agreement has been completed to the satisfaction of the City, confirmation of which shall be provided in writing by the City to the Owner.

ARTICLE 11
GENERAL PROVISIONS

- 11.1 Severability. All covenants and conditions contained in this Agreement shall be severable, and should any covenant or condition in this Agreement be declared invalid or unenforceable by a court of competent jurisdiction, the remaining covenants and conditions and the remainder of the Agreement shall remain valid and shall not terminate.
- 11.2 Governing Law and Jurisdiction. This Agreement shall be interpreted under and be governed by the laws of the Province of Ontario and the laws of Canada applicable in that province. Any dispute or other issue raised between the parties as to the interpretation or effect of this Agreement, or any part of this Agreement, shall be determined by proceedings taken before a court of competent jurisdiction in the Province of Ontario.
- 11.3 No Fettering of Discretion. Except as expressly provided herein, nothing in this Agreement shall:

- a) require, bind or otherwise obligate the City, its municipal Council, or its staff, with respect to any future or pending development, heritage, planning or other statutory approval affecting the Property, except as specifically provided herein;
 - b) fetter any statutory discretion of the City, Council, or its staff with respect to future or pending development, heritage, planning, or other statutory approval affecting the Property, except as specifically provided herein;
 - c) require staff of the City to make recommendations in respect of any future or pending development, planning or other statutory approval affecting the Property;
 - d) require, bind, or otherwise obligate the City, its Council, or its staff to either include or refrain from imposing conditions or requirements within any future or pending development, planning or other statutory approval affecting the Property that is not contemplated herein, even if such conditions or requirements constitute a significant additional burden on the Owner or a significant extension of the obligations imposed on the Owner pursuant to this Agreement.
- 11.4 Headings. Any part numbers and headings, subheadings and section, subsection, clause and paragraph numbers are inserted for convenience of reference only and shall not affect the construction or interpretation of this Agreement. This Agreement shall be construed with all changes in number and gender as may be required by the context.
- 11.5 Owner's Risk and Expense. Every provision of this Agreement, by which the Owner is obligated in any way, shall be deemed to include the words "at the sole risk and expense of the Owner", unless the context otherwise requires, including the payment of any applicable taxes, which includes Harmonized Sales Tax.
- 11.6 Statutes. References herein to any statute or regulation, or any provision thereof, include such statute, regulation or provision thereof as amended, revised, re-enacted and/or consolidated from time to time and any successor statute thereto.
- 11.7 Status of Terms, Provisions, Covenants and Conditions. The terms, provisions, covenants and conditions contained within this Agreement are of equal

significance and are fundamental to this Agreement. The failure to comply with any term, provision, covenant or condition of this Agreement shall be treated as a fundamental breach, entitling the City to have recourse to the full range of remedies available to it at law or in equity.

- 11.8 Without Limiting. Whenever a statement or provision in this Agreement is followed by words denoting inclusion or example and then a list of or reference to specific items, such list or reference shall not be read so as to limit the generality of that statement or provision, even if words such as “without limiting the generality of the foregoing” do not precede such list or reference.
- 11.9 Notice of Easement. The City may, at its expense and in a tasteful manner, erect a plaque on the Property indicating that City holds a heritage easement on the Property. The Owner consents to the City publicizing this Easement.
- 11.10 City Not Liable. The City shall not be liable to successors or assigns of the Owner for any breach of or default in the obligations owed to such successors or assigns under the Easement committed after the registration of the Easement.
- 11.11 Registration. The Owner hereby consents to the registration of this Agreement against title to the Property by the City.
- 11.12 Failure to Exercise or Enforce Rights. No failure by the City to require performance by the Owner of any provision of this Agreement shall affect the right of the City thereafter to enforce such obligation and no failure by the Owner to perform any of its rights or obligations hereunder shall be taken as a waiver of such performance or the performance of any other obligation in the future.
- 11.13 Time of Essence. Time shall be of the essence of this Agreement and shall be deemed to remain so notwithstanding any extension of any time limit.
- 11.14 Joint and Several. Whenever the Owner comprises more than one person, the Owner’s obligations in this Agreement shall be joint and several.
- 11.15 Enurement. The Easement set out herein, including all covenants contained therein, shall run with the Property until such time as the City authorizes its release and shall enure to the benefit of and be binding upon the Owner and the City.

11.16 Entirety. This Agreement contains the entire agreement between the parties with respect to the subject matter herein, and no understandings, verbal or otherwise, exist between the parties except as herein expressly set out.

THE REMAINDER OF THIS PAGE HAS BEEN INTENTIONALLY LEFT BLANK
Signature page to follow

IN WITNESS WHEREOF the parties hereto have hereunto affixed their corporate seals duly attested to by their proper signing officers in that behalf.

**SIGNED, SEALED AND
DELIVERED**

) **THE CORPORATION OF THE**
) **CITY OF BRANTFORD**
) Per:
)
)
) _____
)
)

) **MARKET STREET DEVELOPMENT INC.**
) Per:
)
)
) _____
) **OWNER**
) *I HAVE THE AUTHORITY TO BIND THE COMPANY*
)
) _____
) *Please print name and title*

SCHEDULE "A"
LEGAL DESCRIPTION OF THE PROPERTY

FIRSTLY: PART OF LOT 8, S/S CHATHAM ST PLAN CITY OF BRANTFORD, SEPTEMBER 7, 1892 BRANTFORD CITY AS IN A456466; T/W A456466; BRANTFORD CITY SECONDLY: PART OF LOT 8, S/S CHATHAM ST PLAN CITY OF BRANTFORD, SEPTEMBER 7, 1892 BRANTFORD CITY; PART OF LOT 9, S/S CHATHAM ST PLAN CITY OF BRANTFORD, SEPTEMBER 7, 1892 BRANTFORD CITY DESIGNATED AS PARTS 1, 2 & 3, 2R-5607; S/T A512048; BRANTFORD CITY THIRDLY: PART OF LOTS 8, 9, 10, S/S CHATHAM ST PLAN CITY OF BRANTFORD, SEPTEMBER 7, 1892 BRANTFORD CITY AS IN A444626; S/T & T/W A444626 FOURTHLY: PART OF LOTS 8, 9, 10, S/S CHATHAM ST PLAN CITY OF BRANTFORD, SEPTEMBER 7, 1892 BRANTFORD CITY AS IN A368040; S/T & T/W A368040 FIFTHLY: PART OF LOT 11, N/S NELSON ST PLAN CITY OF BRANTFORD, SEPTEMBER 7, 1892 BRANTFORD CITY AS IN A358343; BRANTFORD CITY SIXTHLY: LOT 10, N/S NELSON ST PLAN CITY OF BRANTFORD, SEPTEMBER 7, 1892 BRANTFORD CITY; PART OF LOT 11, N/S NELSON ST PLAN CITY OF BRANTFORD, SEPTEMBER 7, 1892 BRANTFORD CITY AS IN A358344 (FIRSTLY); BRANTFORD CITY SEVENTHLY: PART OF LOTS 9 & 10, S/S CHATHAM ST PLAN CITY OF BRANTFORD, SEPTEMBER 7, 1892 BRANTFORD CITY DESIGNATED AS PART 2, 2R-6747; T/W A512050 AND T/W EASE OVER PART 3, 2R-6747 FOR INGRESS & EGRESS AS IN BC102065 EIGHTHLY: PART OF LOTS 9 & 10, S/S CHATHAM ST PLAN CITY OF BRANTFORD, SEPTEMBER 7, 1892 BRANTFORD CITY DESIGNATED AS PARTS 1 & 3, 2R-6747; T/W A512050 NINTHLY: PART OF LOT 11, N/S NELSON ST PLAN CITY OF BRANTFORD, SEPTEMBER 7, 1892 BRANTFORD CITY AS IN A358344 (THIRDLY); SUBJECT TO AN EASEMENT OVER PART 3, 2R-6747 IN FAVOUR OF PART 2, 2R-6747 AS IN BC102065; CITY OF BRANTFORD, BEING ALL OF THE PIN 32141-0118(LT)