

THIS HERITAGE EASEMENT AGREEMENT made this ____ day of ____, 2024

BETWEEN:

**THE CORPORATION OF THE CITY OF
CAMBRIDGE**

(hereinafter referred to as "the City")

-and-

Terry & Brenda CARTER

(hereinafter referred to as the "Owner")

WHEREAS the Owner is the owner of lands and premises situated in the City of Cambridge, Regional Municipality of Waterloo, Province of Ontario, the parcel known municipally as 171 Guelph Avenue, being more particularly described in Schedule "A" to this Heritage Easement Agreement ("HEA") (hereinafter "the Lands");

AND WHEREAS there is a building located on the Lands known as "171 Guelph Avenue" (hereinafter "Forbes Estate House") which is of cultural heritage value and which is to be protected through designation of the property under Part IV of the *Ontario Heritage Act*, R.S.O. 1990, c.O.18 once the "Work" under this HEA is completed;

AND WHEREAS one of the purposes of the *Ontario Heritage Act* is to support, encourage and facilitate the conservation, protection, and preservation of Ontario's cultural heritage resources such as the Forbes Estate House.

AND WHEREAS by subsection 37(1) of the *Ontario Heritage Act*, the City may enter into easements or covenants with owners of real property or persons having interests therein, for the conservation of property of cultural heritage value or interest;

AND WHEREAS by subsection 37(3) of the *Ontario Heritage Act*, such easements and covenants, when registered in the proper Land Registry Office against the real property affected by them shall run with the real property and may be enforced by the City or its assignee against the owners or any subsequent owners of the real property, even where the City owns no other land which would be accommodated or benefited by such covenants or easements;

AND WHEREAS the City and Owner desire, in this HEA, to conserve the elements of cultural heritage value of the Forbes Estate House as set out in the Statement of Cultural Heritage Value in Schedule "B" to this HEA and in the Conservation Plan dated January 6, 2023, on file at the City, and to secure the restoration and rehabilitation of

the Forbes Estate House in accordance with the Conservation Plan, attached in part below. The full Conservation Plan is on file at the City.

NOW THEREFORE THIS INDENTURE WITNESSETH that in consideration of the payment of the sum of TWO DOLLARS (\$2.00) from each party to the other and for other good and valuable consideration, including the mutual covenants contained herein, the receipt and sufficiency of which is hereby acknowledged, the City and the Owner (collectively "the Parties") hereto covenant, agree and warrant as follows:

THEREFORE the parties agree as follows:

1.0 RECITALS, SCHEDULES, AND REASONS FOR IDENTIFICATION

- 1.1 The Recitals and Schedules shall form part of this HEA.
- 1.2 The Owner and the City agree that for the purposes of this HEA, the Statement of Cultural Heritage Value included as Schedule "B" sets out the reasons why the Forbes Estate House has been identified by the City as having cultural heritage value and will be the basis of any designation by-law for the property that may be brought forward in the future following this agreement.
- 1.3 Further, the Owner and the City agree for the purposes of this HEA, the original photographs included in the Conservation Plan show the state of the Forbes Estate House prior to the undertaking of the works outlined in Sections 2.3, 2.4 and 2.5 of this HEA and generally depict certain significant features of the appearance or the construction of the Forbes Estate House. The parties also agree that when determining the duties of the Owner under this HEA, the Conservation Plan shall be referred to.
- 1.4 Following the restoration of the Forbes Estate House in accordance with this HEA, the City shall be permitted to take replacement photographs to those mentioned in Section 1.3 above, identifying the same features as in the original photographs. The new photographs shall be kept on file with the City.

2.0 DUTIES OF THE OWNER

Alterations

- 2.1 The Owner shall not, without the prior written approval of the City, undertake or permit any alteration, demolition, repair, construction, remodelling, restoration, relocation or any other thing or act which would materially affect the heritage features of the Forbes Estate House as described in the Statement of Cultural Heritage Value and shown in photographs in the Conservation Plan.

- 2.2 Any application for the written permission of the City under Section 2.1 shall be submitted in the same form and considered by the City pursuant to the same process as an application for similar activities for individually designated properties under Part IV of the *Ontario Heritage Act* (heritage permit).

Permitted Alterations

- 2.3 The Owner shall restore the Forbes Estate House in accordance with the Conservation Plan.
- 2.4 The Owner shall restore and renovate the Forbes Estate House in accordance with the Conservation Plan's maintenance recommendations outlined in Section 4. A timeline has been established for urgent repairs (Section 4.3), Short Term Repairs and Restoration (Section 4.4), and Long Term Repairs and Restoration (Section 4.5). All reasonable efforts should be made to adhere to general repair and restoration timeline outlined in Section 4 of the Conservation Plan.
- 2.5 If, prior to the commencement of the work contemplated in Sections 2.3 ,2.4 ,2.5 and 2.10, the Owner desires to make revisions to this proposed work, written permission must be obtained from the City in accordance with Section 2.2.

Security and Breach of Owner's Obligations

- 2.6 Immediately upon execution of this HEA, the Owner will provide the City with security in the amount of \$411,500 in order to secure the Owner's obligations hereunder. The amount of \$411,500 is based on an estimate of the full cost of work to be performed with respect to the Heritage Building, as outlined in Section 2.1, 2.4, 2.5 and 2.10 and in accordance with the Conservation Plan.

- 2.7 The Owner covenants and agrees:

- a) to provide to the City prior to execution of this Agreement by the City, an irrevocable and unconditional letter of credit from a financial institution acceptable to the City or other security (the "security") deemed satisfactory at the sole discretion of the City in the amount set out in the Conservation Plan for the cost of all Works related to conservation of the Forbes estate and stone wall and compliance with all conditions in this Agreement;
- b) to file a letter of credit and to keep the said letter of credit in full force and effect and pay all premiums as the said letter(s) of credit becomes due or until such time as the City reduces or returns the letter of credit in

accordance with Clause 2.7c);

- c) that the security held for the Works and Facilities referenced in Clause 2.7a) shall be fully released by the City once one hundred per cent (100%) of the total cost of the Works have been completed and paid by the Owner.
- d) that pursuant to the Municipal Act, 2001, in the event the Owner fails to perform the Works required to be performed herein, such Works and Facilities may be performed and/or completed by the City at the Owner's expense. Upon failure of the Owner to complete the Works within the said one (1) year period, or to undertake any other obligation of the Owner under this Agreement, the City may provide 30 days written notice to require remedy. If the deficiency or obligation is not performed within the notice period, the City and/or its authorized agents may enter in and upon the property of the Owner without providing notice to the Parties and perform and/or complete the Works at the Owner's expense. In the event that the City and/or its authorized agents perform or complete any or all of the Works, the City may draw on the aforementioned letter of credit or other satisfactory security approved by the City in such amount(s) as may be required to pay for the cost incurred by the City and/or its authorized agents to perform and/or complete the Works. In addition, or in the alternative, the City may add the full cost or any part of the cost incurred by the City or its authorized agents to perform or complete the Works to the tax roll of the Lands and collect the expense in like manner as municipal taxes;
- e) that wherever in this Agreement a letter of credit is required to be filed with the City, the Owner may deposit with the City cash, certified cheque or bank draft in an amount equal to the letter of credit and such deposit shall be held by the City as security in accordance with this Agreement, provided that no interest shall be payable by the City on any such deposit; and;
- f) that upon the transfer of ownership of the Lands, the City will not return any letter of credit required under this Agreement until the new owner files with the City a substitute letter of credit or such other security as may be permitted in the required amounts.

2.8 If the City is of the opinion, reasonably held, that the Owner has failed to perform any of its obligations set out in this HEA, in addition to any of its other legal or equitable remedies, the City may serve on the Owner a notice setting out particulars of the breach and of the City's estimated maximum costs of remedying the breach. The Owner shall have ninety (90) days from receipt of such notice to remedy the breach or make arrangements satisfactory to the City for remedy of the breach, or the City may draw on the security to the amount of

the actual cost of remedying the breach and may enter upon the Lands to complete the Owner's obligations. Any expenses reasonably incurred by the City in completing the obligations of the Owner over and above the security provided shall be a debt owed by the Owner to the City and recoverable by the City by action in a court of law or may be added as an additional charge by the City on the Owner's Property Taxes and collected in a similar manner as municipal taxes.

Insurance

- 2.9 The Owner shall at all times keep the Forbes Estate House insured against all perils including fire, in an amount equal to no less than the replacement cost of the Forbes Estate House as if it had been properly relocated, is intact and is restored in accordance with the Conservation Plan and the requirements of this Agreement. The City shall be added to the insurance policy as a Loss Payee.
- 2.10 Upon execution of this HEA, the Owner shall deliver to the City a certified copy of the insurance policy, with limits and with a company that is acceptable to the City. At least three (3) weeks before the expiry of this policy, the Owner shall provide evidence of renewal of said policy satisfactory to the City.
- 2.11 If the Owner fails to insure the Forbes Estate House, as required in Section 2.11, or if any such insurance on the Forbes Estate House is cancelled or terminated, the City may obtain such insurance as the City deems necessary in an amount equal to the replacement cost as described in Section 2.11. Any sum paid in so doing shall forthwith be paid by the Owner to the City or, if not, shall be a debt due and owing to the City and recoverable from the Owner by action in a court of law or may be added as an additional charge by the City on the Owner's Property Taxes and collected in a similar manner as municipal taxes.
- 2.12 All proceeds receivable by the Owner under any insurance policy on the Forbes Estate House shall be applied to the replacement, rebuilding, restoration or repair of the Forbes Estate House to the fullest extent possible having regard to the Statement of Cultural Heritage Value in Schedule "B", the Conservation Plan, the particular nature of the Forbes Estate House, and the cost of such work.
- 2.13 The Owner and any consultant/contractor on behalf of the Owner shall identify, hold harmless and defend the City and their respective directors, officers, council members, partners, agents and employees from and against all claims, demands, losses, costs (including all legal costs), damages, actions, suits or proceedings that arise directly or indirectly out of, or are attributable to, the Owner's performance of, or failure to perform contractual obligations,

condition of the work, the place of the work, a joining lands or highways used in connection with the performance of the work, including any act or omission of the owner or its agents, any sub consultant/contractor, employees, workers or other persons for whom the Owner and/or consultant/contractor is in law responsible. This indemnification shall include any legal costs incurred by the City of Cambridge on a substantial indemnity basis, including those incurred to defend any criminal or quasi-criminal prosecutions against the City resulting from the actions of the owner and/or the actions of any consultant or contractor performing work on the Owner's behalf.

Damage or Destruction

- 2.14 The Owner shall notify the City of any damage or destruction to the Forbes Estate House within five (5) days of such damage or destruction being discovered.
- 2.15 In the event of damage or destruction of the Forbes Estate House the Owner shall, subject to prior approval from the City, replace, rebuild, restore or repair the Forbes Estate House in accordance with the Conservation Plan. The Owner shall submit all plans and specifications for such replacement, rebuilding, restoration or repair to the City for its written approval within ninety (90) days of the discovery of damage or destruction. Any approval will be made with reference to the Conservation Plan. The determination of the Senior Planner-Heritage shall be final. If the City fails to respond to a submission of plans and specifications within ninety (90) days of the receipt, approval shall be deemed to have been given.
- 2.16 The Owner agrees it shall carry out the work described in Section 2.15 on the Forbes Estate House but shall not cause such work to be commenced before receiving the written approval of the City of the plans and specifications for it. Any such work shall conform to the plans and specifications approved by the City and any terms and conditions as the City may stipulate acting reasonably. All work on the Forbes Estate House shall be commenced within thirty (30) days of the City's approval and shall be completed within nine (9) months of commencement of that work, or as soon as possible thereafter if factors beyond the Owner's control prevent completion within the nine (9) months.
- 2.17 If the Owner fails to submit plans and specifications pursuant to Section 2.15 which are acceptable to the City, the City may prepare its own set of plans and specifications. The Owner shall have sixty (60) days from receiving a copy of such plans and specifications to notify the City in writing that it intends to carry out the work in accordance with those plans and specifications, failing which the City may enter on the property, on thirty (30) days' notice to the Owner, and proceed with the work. The cost of such work shall be up to the value of any insurance proceeds receivable by the Owner under any insurance policies and any additional amount that the City is

prepared to contribute to the cost of such work. Upon demand, the Owner shall reimburse the City for expenses incurred by the City. In the event that the insurance proceeds are insufficient to cover the reasonable costs of the work, any deficiency shall become a debt due to the City and may be collected from the Owner in any manner permitted by law, including adding the cost as an additional charge by the City on the Owner's Property Taxes and collected in a similar manner as municipal taxes.

Maintenance and Security of the Heritage Building

2.18 The Owner shall be responsible for ensuring that the Forbes Estate House is maintained and secured in compliance with the *Fire Protection and Prevention Act, 1997*, S.O. 1997, c. 4, as amended or succeeded, and the Fire Code thereunder, as well as City by-laws having the intent of ensuring the property is not a fire hazard, is secured from unauthorized entry and is maintained in a good state of repair and complies with all applicable law.

Emergencies

2.19 Notwithstanding section 2.1, the Owner may undertake temporary measures in respect of the Forbes Estate House so long as they are:

- a) In keeping with the intent of this HEA;
- b) Consistent with the conservation of the Forbes Estate House and the Statement of Cultural Heritage Value in Schedule B;
- c) Reasonably necessary to deal with an emergency which puts the security or integrity of the Forbes Estate House at risk of damage;
- d) In compliance with the *Building Code Act, 1992*, S.O. 1992, c. 23, as amended or succeeded; and
- e) Undertaken in consultation with the City's Heritage Planning Staff unless time does not permit consultation in case of emergency.

2.20 If time does not permit the Owner to consult with City's Heritage Planning Staff before undertaking any temporary measures, the Owner shall notify the City of any measures taken within ten (10) days and must make arrangements with and satisfactory to the City for a permanent solution, where one is required by the Senior Planner-Heritage.

Notice to City of Divestment

2.21 The Owner shall immediately notify the City in the event that the Owner divests itself of the fee simple title to or of their possessory interest in the Lands.

3.0 WAIVER

3.1. The failure of the City at any time to require performance by the Owner of any obligation under this HEA 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 be taken or be held to be a waiver of the performance of the same or any other obligation at any later time.

4.0 EXTENSION OF TIME

4.1 Time shall be of the essence of this HEA. Any time limits specified in this HEA may be extended with the consent in writing of both the Owner and the City, but no such extension of time shall operate as an extension of any other time limit, for which time shall remain of the essence.

5.0 INSPECTION OF THE HERITAGE BUILDING

5.1 The City or its representatives shall be permitted at all reasonable times to enter upon the Lands and inspect the Forbes Estate House upon prior written notice to the Owner of at least twenty-four (24) hours, or as otherwise permitted pursuant to the *Ontario Heritage Act*.

6.0 SEVERABILITY

6.1 The Owner and the City agree that all covenants, easements and restrictions contained in this HEA shall be severable, and that should any covenant, easement or restriction in this HEA be declared invalid or unenforceable, the remaining covenants, easements and restrictions shall not terminate thereby.

7.0 NOTICE

7.1. Any notices to be given under this HEA shall be in writing and be delivered by personal delivery, prepaid registered mail, or by email to the other party as follows:

THE OWNER
Terry & Brenda CARTER
Address:
Telephone:

Email:

City Clerk
The Corporation of the City of Cambridge 50 Dickson Street
P.O. Box 669
Cambridge, ON N1R 5W8 Tel: (519) 740-4683
Fax: (855) 351-9223

And to:

Chief Planner, Community Development Department The Corporation of the
City of Cambridge

50 Dickson Street
P.O. Box 669
Cambridge, ON N1R 5W8 Tel: (519) 623-1340
Fax: (519) 740-7729

- 7.2. Notice shall be deemed to have been received on the date of personal delivery or email transmission if such date is a business day and delivery is made prior to 4:00pm and otherwise on the fifth (5th) day after the date of mailing by prepaid registered mail.
- 7.3. The parties shall notify each other immediately, in writing or by email, of any changes of address from those set out above.

8.0 ENTIRETY

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

9.0 SUBSEQUENT INSTRUMENTS TO CONTAIN THESE PROVISIONS

- 9.1 Notice of these covenants shall be inserted by the Owner in any subsequent agreement affecting that portion of the Lands on which the Forbes Estate House is located or relocated and by which the Owner divests itself of the fee simple title to, or of their possessory interest in that portion of the Lands on which the Forbes Estate House is located or relocated.

10.0 INTERPRETATION

- 10.1 The headings in the body of this HEA form no part of the HEA but shall be deemed to be inserted for convenience of reference only.

10.2 This HEA shall be construed with all changes in number and gender as may be required by the context.

11.0 REGISTRATION

11.1 It is understood and agreed that this HEA shall be registered on title to the Lands in priority to all other interests in the Lands at the Owners' expense and shall not be removed until the Owner has completed all obligations as set out herein to the satisfaction of the Senior Planner-Heritage.

12.0 ENUREMENT

12.1 It is intended that the covenants, easements, and restrictions set out in this HEA shall run with the Lands and shall enure to the benefit of and be binding upon the Owner and upon the City and their respective heirs, executors, administrators, successors and assigns, as the case may be.

12.2 In the event that the Owner transfers the Lands, upon the purchaser of the Lands providing their agreement by way of Unilateral Undertakings in favour of the City to assume the obligations of the Owner pursuant to this HEA, the Owner named herein shall be released from any further obligations and liability and such purchasers shall be deemed to be the parties originally named as the Owner.

13.0 POSTPONEMENTS

13.1 Prior to the registration of this HEA on title to the Lands, the Owner shall provide any postponements the City Solicitor considers necessary to ensure that this HEA shall have priority over any other interests in the Lands when registered. This shall be provided at no cost to the City.

IN WITNESS WHEREOF the parties have hereunto affixed their signatures attested to by their proper signing officers in that behalf:

OWNER: Terry & Brenda CARTER

Per:
Name:
Title:

Per:
Name:

Title:

I/We have authority to bind the Corporation.

City of Cambridge:

Per:

Name:

Title:

I/We have authority to bind the Corporation.

SCHEDULE "A"

Legal Description of the Lands

Schedule "A"

Block 1, Plan 58M-716, City of Cambridge, PIN 03758-1449(LT).

SCHEDULE “B”

STATEMENT OF CULTURAL HERITAGE VALUE

The property at 171 Guelph Avenue, City of Cambridge retains physical/design, historical/associative, and contextual value.

The property at 171 Guelph Avenue, known as the Forbes Estate, includes a fine example of a Classical Revival home with Beaux-Arts details. The Forbes House displays high degrees of craftsmanship and artistic merit throughout including its expressive front façade that incorporates ornate Ionic columns, wooden railings, and robust cornice. The building has a prominent porte-cochère that incorporates stone elements and includes Beaux-Arts details such as lead windows and exterior light fixtures. The Forbes House was designed by Taylor and Taylor, a Brantford based architecture firm that designed numerous important buildings in Brantford including the Market Building, Temple Building, Masonic Hall, and Brantford City Hall. The firm also designed buildings in Ingersoll, Woodstock, London, along with the St. Andrew’s Presbyterian Church in Hespeler. In addition to the Forbes House, the property formerly featured a stone tower used for agricultural purposes that will be relocated to Jacob’s Landing at the Hespeler Mill Pond.

The Forbes Estate’s location on the fringes of the Hespeler community adjacent to the Speed River is consistent with a historical approach to landscape and estate design that maintained that a rural setting and proximity to the natural environment were beneficial to health and wellness. The high degree of craftsmanship and artistic merit of the Forbes House, the Forbes Estate’s winding driveway and its articulation with a porte-cochère, extant rows of vegetation, remnant rubble stone wall, and the former orchard are consistent features of estate-like properties.

Historically, the property is associated with several prominent residents throughout its history, namely George Forbes, the first mayor of the Town of Hespeler, founder of the Dominion Woollens Textile Mill, and a prominent industrialist within the community. Forbes’ assemblage of the property has created the large estate-like property. Forbes’ son George Alexander Forbes also lived on the property and, like his father, was a prominent capitalist but was also known for his conservation work involving wood ducks. George Forbes’s brother-in-law, Zachariah Hall, also lived in the Forbes House. Hall was a local manufacturer and notable inventor of the two-piece hockey stick. Additionally, the property is associated with early agricultural development in Hespeler and may be associated with Hespeler’s original farm, associating the property with one of the community’s earliest settlers, an important businessman within the Hespeler community, and the namesake for the town.

Contextually, the Forbes Estate has historically been a defining feature north of the Speed River with the property comprising much of the land east of Guelph Avenue. Today, the Forbes Estate is much smaller but retains a distinctive setting on Guelph Avenue. Though partially obscured, the Forbes House is the visually predominant feature of the property and is one of three buildings on contiguous properties on the east side of Guelph Avenue

with historic influences and similar setbacks from the street. The east side of Guelph Avenue is tree-lined and contributes to the streetscape and exemplifies the private character of the Forbes Estate.

Description of Heritage Attributes

Forbes House

- The location of the Forbes House, set back from Guelph Avenue;
- The winding driveway leading to the Forbes House;
- The materials including buff brick and stone plinths, lintels, sills, ornamentation, and wood detailing;
- The front facade including the entrance with its stone lintel, wooden doors, and sidelights; incorporating Beaux-Arts details, the ornate ionic columns, wooden railings, porch, and balcony;
- The rare porte-cochere on the south elevation which is supported by four square brick piers sitting on stone plinths with base mouldings. The roof of the porte-cochere has a cornice with dentils and decorative brackets;
- The Beaux-Arts details including lead windows and exterior light fixtures; and
- The slate mansard roof with flared eaves, identical dormers, and robust cornice including dentils and brackets on all elevations.
- Three brick external chimneys on the south, north and east elevations;
- The symmetrical principal (west) façade, that features ornate ionic columns with a stone base, a first-floor porch, and second storey balcony that spans the width of the front elevation, containing robust wooden railings;
- The overhanging roof, which contains a significant cornice with dentils and evenly spaced brackets;
- A projecting portion of the building on the north elevation that contains two stone band courses and an external chimney with stepped stone inset.

Other features

- The rubble wall, which contributes to the estate boundary along Guelph Avenue;
- The rows of vegetation on the property demarcating the boundary along Guelph Avenue and the internal boundary between the Forbes House and the original George Forbes House that was demolished in 1949.