

THIS EASEMENT AGREEMENT made at St. John’s, in the Province of Newfoundland, on the **DAY** day of **MONTH, YEAR;**

BETWEEN:

OWNER’S NAME
MAILING ADDRESS
COMMUNITY PROVINCE COUNTRY POSTAL CODE

(hereinafter called the “Owner”)

OF THE FIRST PART

AND:

THE HERITAGE FOUNDATION OF NEWFOUNDLAND AND LABRADOR, a body corporate continued, by the Act, R.S.N. 1990, c. H-4;

herein called the Foundation

OF THE SECOND PART

WHEREAS the Owner is the registered title holder of certain lands and premises situated in **COMMUNITY** in the district of **DISTRICT** in the Province of Newfoundland and Labrador, (hereinafter called the Registered Heritage Structure) being commonly referred to as “**SHORT DESCRIPTION,**” and more particularly described in Schedule A attached hereto, which Schedule forms part and parcel of these presents;

AND WHEREAS by section 20(b) of an *The Historic Resources Act* (hereinafter called the *Act*) the objects of the Foundation are to support and contribute to the preservation, maintenance and restoration of buildings and other structures of architectural or historical significance in the Province of Newfoundland;

AND WHEREAS by section 21c of the *Act*, the Foundation has the power to enter into easements and covenants with any person to whom the Foundation makes a grant for the preservation, maintenance or restoration of the architectural or historical characteristics of the Registered Heritage Structure for which the grant has been made;

AND WHEREAS covenants and easements entered into by the Foundation, when registered in the proper land registry office against the real Registered Heritage Structure affected by them, shall run with and become part and parcel of the real Registered Heritage Structure and may, whether positive or negative in nature, be enforced by the Foundation or its assignee against the Owner or any subsequent owners of the Registered Heritage Structure, even where the Foundation owns no other land which would be accommodated or benefited by such covenants and easements;

AND WHEREAS the Owner and the Foundation desire to conserve the present historical, architectural, aesthetic and scenic character and condition of the Registered Heritage Structure;

AND WHEREAS to that end, the owner and the Foundation desire to enter into this Agreement to implement the objects and goals of the **Act** (hereinafter called the Agreement);

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the sum of One Dollar (\$1.00) of lawful money of Canada now paid by the Foundation to the Owner (the receipt of which is hereby acknowledged), and for other valuable consideration, and in further consideration of the granting of the Agreement herein and in further consideration of the mutual covenants and restrictions hereinafter set forth, and in further consideration of the objects of the **Act**, the Owner and the Foundation agree to abide by the following covenants, easements and restrictions which shall run with the Registered Heritage Structure forever.

1.0 **DUTIES OF OWNER**

1.1 **Alterations and Repairs**

The Owner shall, not except as hereinafter set forth, without the prior written approval of the Foundation, undertake or permit any demolition, construction, alterations, remodelling, or any other thing or act which would materially affect the appearance or construction of the Heritage Structure as depicted in the copies of the photographs, drawings and/or other material as contained in the Registry of the Foundation located at the address contained in Article 10.1. The Foundation is to respond in writing to a written request for the said approval within sixty (60) days of receiving such a request at its address as set out in Article 10.1 of this Agreement. If the approval of the Foundation is given under this paragraph, the Owner, in undertaking or permitting the construction, alteration, remodelling, or other thing or act so approved of or deemed to be approved of, shall use materials specified by the Foundation.

The Owner may, without the prior written approval of the Foundation, undertake or permit the repair or refinishing of presently existing parts of elements of the Registered Heritage Structure, damage to which has resulted from casualty, loss, deterioration, or wear and tear, provided that such repair or refinishing may not be performed in a manner which would materially affect the construction or appearance of the Registered Heritage Structure as depicted in the copies of photographs, drawings or other material contained in the Registry of the Foundation as referred herein.

1.2 ***Insurance***

The Owners shall carry appropriate insurance on the Registered Heritage Structure. In the event of a loss, an amount equal to the loss up to the value of the grant shall be paid onto the Foundation from the insurance proceeds.

1.3 ***Demolition***

The Owner shall notify the Foundation of any damage or destruction to the Registered Heritage Structure within ten (10) clear days of such damage or destruction occurring. In the event that the Registered Heritage Structure 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 Registered Heritage Structure, the Owner shall, in writing within forty (40) days of the giving by the Owner of notice of such damage or destruction, request written approval of the Foundation to demolish the Registered Heritage Structure, and in the event of receiving the approval in writing of the Foundation, make payable to the Foundation an amount equal to the original grant from the insurance hereinbefore mentioned and to demolish the buildings. Approval by the Foundation shall be deemed to have been received upon failure of the Foundation to respond in writing to a written request for it within forty (40) days of the receipt thereof.

1.4 ***Reconstruction by Owner***

If the Foundation does not give the approval referred to in paragraph 1.3, or if the Owner has not requested the approval referred to in paragraph 1.3, the Owner shall replace, rebuild, restore or repair the Registered Heritage Structure to the limit of any proceeds receivable under any fire and extended coverage insurance policy or policies on the Registered Heritage Structure and of any additional monies contributed by the Foundation towards the replacement, rebuilding, restoration or repair of the Registered Heritage Structure under the provisions of paragraph 1.2 to effect a partial or complete restoration of the Registered Heritage Structure. Before the commencement of such work, the Owner shall submit all plans and specifications for the replacement, rebuilding, restoration, or repair of the Registered Heritage Structure to the Foundation for its written approval within one hundred and thirty-five (135) days of the damage or destruction occurring to the Registered Heritage Structure. Restorative work on the Registered Heritage Structure shall not be commenced without

the prior written approval of the Foundation and shall be performed upon such terms and conditions as the Foundation may stipulate. Such approval shall be deemed to have been received upon failure of the Foundation to respond in writing to a written request for it within thirty (30) days of the receipt of such request by the Foundation. The Owner shall cause all replacement, rebuilding, restoration and repair work on the Registered Heritage Structure to be commenced within thirty (30) days of the approval by the Foundation of the plans and specifications for it and to be completed within nine (9) months of commencement, or as soon as possible thereafter if factors beyond its control prevent completion within the said nine (9) months, and the Owner shall cause all such work to conform to the plans and specifications approved of and terms and conditions stipulated by the Foundation.

1.5 ***Reconstruction by Foundation***

In the event that the request to demolish the Registered Heritage Structure is not submitted or is refused pursuant to the provisions of paragraph 1.3 and the Owner fails to submit plans and specifications for the replacement, rebuilding, restoration or repair of the Registered Heritage Structure pursuant to paragraph 1.4 which are acceptable to the Foundation, the Foundation may prepare its own set of plans and specifications for the Registered Heritage Structure. The owner shall have thirty (30) days from receiving a copy of such plans and specifications to notify the Foundation in writing that it intends to replace, rebuild, restore, or repair the Registered Heritage Structure in accordance with those plans and specifications. If the Owner does not so notify the Foundation within the said thirty (30) days, the Foundation may proceed with replacing, rebuilding, restoring or repairing the Registered Heritage Structure up to the value of any insurance proceeds receivable by the Owner under any fire and extended coverage insurance policy or policies and of any additional amount that the Foundation is prepared to contribute to effect a partial or complete restoration of the Registered Heritage Structure. The Owner shall reimburse the Foundation for any expenses incurred by the Foundation thereby to an amount not to exceed any insurance proceeds receivable by the Owner under any fire and extended coverage insurance policy or policies.

In the event that the Foundation does not submit its own plans and specifications or does not proceed with replacing, rebuilding, restoring or repairing the Registered Heritage Structure within sixty (60) days after it becomes so entitled, unless it is prevented from so doing by the action or omission of the Owner or any tenant or agent of the Owner, or by any other factors beyond its control, the Foundation's rights under this paragraph shall automatically terminate and the Owner shall be

entitled to retain the proceeds receivable, minus the original Restoration Grant which will be returned to the Foundation, under any fire and extended coverage insurance policy or policies and to demolish the Registered Heritage Structure.

1.6 ***Maintenance of the Heritage Structure***

The Owner shall at all times maintain the Registered Heritage Structure in as good and sound state of repair as a prudent owner would normally do so that no deterioration in the present condition and appearance of the Heritage Structure shall take place.

1.7 ***Signs, Structures, Etc.***

The Owner shall not erect or permit the erection on the Registered Heritage Structure of any signs, permanent storm doors, screens or awnings, television aerials or other similar type objects without the prior written approval of the Foundation.

2.0 ***Remedies of Foundation***

If the Foundation is of the opinion that the Owner has neglected or refused to perform any of its obligations set out in this Agreement, the Foundation 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 Foundation's estimated maximum costs of remedying the breach. The Owner shall have thirty (30) days from receipt of such notice to remedy the breach or make arrangements satisfactory to the Foundation for remedying the breach.

If after the said thirty (30) days the Owner has not remedied the breach or made arrangements satisfactory to the Foundation for remedying the breach, or if the Owner does not carry out the said arrangements within a reasonable period of time, the Foundation may enter upon Registered Heritage Structure and may carry out the Owner's obligations and the Owner shall reimburse the Foundation for any expenses incurred thereby, up to the estimated maximum costs of remedying the breach set out in the aforesaid notice. Such expenses incurred by the Foundation shall, until paid to it by the Owner, be a debt owned by the owner to the Foundation and recoverable by the Foundation by action in a court of law.

3.0 ***Approvals***

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

4.0 ***Waiver***

The failure of the Foundation 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 Foundation 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.

5.0 ***Extension of Time***

Time shall be of the essence in this Agreement. Any time limits specified in this Agreement may be extended with the consent in writing of the parties, and time shall be deemed to remain of the essence of this Agreement notwithstanding any extension of any time limit.

6.0 ***Use of Registered Heritage Structure***

The Owner expressly reserves for himself, his heirs, executors, administrators and assigns the right to use the Registered Heritage Structure for all purposes not inconsistent with this Agreement.

7.0 ***Inspection Of The Registered Heritage Structure***

The Foundation or its representatives shall be permitted at all reasonable times to enter upon and inspect the Registered Heritage Structure upon prior written notice to the Owner of at least twenty-four (24) hours.

8.0 ***Plaque and Publicity***

The Owner agrees to allow the Foundation further to section 21(d) of the **Act**, to erect a plaque on the Registered Heritage Structure, in a tasteful manner and at the Foundation's expense, indicating that the Foundation holds a conservation easement on the Heritage Structure. The Owner also agrees to allow the Foundation to publicize the existence of the easement and undertakes and

agrees to disclose the designation as a Registered Heritage Structure and to promote the objects of the Foundation. The plaque remains the property of the Foundation.

9.0 *Severability of Covenants*

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

10.0 *Notice*

10.1 *Addresses of Parties*

Any requests for approval required under this Agreement and the Foundation's replies to such requests shall be delivered to the parties at their respective addresses by registered mail or served upon them by personal service. The respective addresses of the parties for such purposes presently are as follows:

THE OWNER
OWNER
STREET ADDRESS
TOWN PROVINCE POSTAL CODE

THE FOUNDATION
 Heritage Foundation of Newfoundland and Labrador
 P. O. Box 5171
 St. John's, NL A0A 5V5
Attention: Executive Director

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

11.0 *Costs*

In the event that a dispute arises between either of the parties hereto because of this Agreement, each party shall be responsible for its own legal fees, court costs and all other similar type expenses which may result from any such dispute, unless there is an Order of a Court to the contrary.

12.0 *Indemnification*

The Owner shall hold the Foundation harmless against and from any and all liabilities, suits, actions, proceeds, claims, causes, damages, judgements 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 anything done pursuant to this Agreement by the owner, 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 Foundation its agents, servants or workmen pursuant to paragraphs 1.5 and 2.0.

13.0 *Entirety*

This written 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.

14.0 *Notice of These Provisions*

Notice of these covenants, easements and restrictions 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 whole or any part of the Registered Heritage Structure.

14.1 *Notice To Foundation*

The Owner shall immediately notify the Foundation in the event that it transfers either the fee simple title to or its possessor interest in the Registered Heritage Structure.

15.0 *Canadian Register of Historic Places Agreement*

I/We the undersigned furthermore grant permission to have the structure placed on the Foundation's online register of designated properties, and to be placed on the Canadian Register of Historic Places (www.historicplaces.ca).

16.0 *Covenants To Run With the Registered Heritage Structure*

The covenants, easements and the restrictions set out in this Agreement shall run with the Registered Heritage Structure and shall endure to the benefit of and be binding upon the parties hereto and their successors and assigns.

IN WITNESS WHEREOF of the parties hereto have hereunto set their hands and seals.

SIGNED, SEALED AND DELIVERED

in the presence of:

Owner(s) of Registered Heritage Structure

Per:

Witness

Owner(s)

Signature Date

The Heritage Foundation of
Newfoundland and Labrador

Per:

Witness

Chairperson/Board Member

Witness

Executive Director