



An agency of the Government of Ontario



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## Ontario Heritage Trust heritage conservation easement property

Under Ontario Heritage Act section 10 (1) (c), the Trust may enter into agreements, covenants and easements with owners of real property or interests in real property for the conservation, protection and preservation of the heritage of Ontario. Under section 22 (1), any easement or covenant entered into by the Trust may be registered against the real property affected in the proper land registry office.

Conservation easements are voluntary legal agreements between heritage property owners and the Ontario Heritage Trust that protect significant features of a property. The terms of the easement are registered on the property title and apply to the easement donor and all future owners of the property. Easements allow the Trust to protect a heritage site without owning it. They also offer conservation-minded Ontarians an opportunity to permanently protect the heritage value of their property while continuing to enjoy it.

This document was retrieved from the Ontario Heritage Act Register, which is accessible through the website of the Ontario Heritage Trust at [www.heritagetrust.on.ca](http://www.heritagetrust.on.ca).

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## Bien faisant l'objet d'une servitude de conservation du patrimoine par la Fiducie du patrimoine ontarien

En vertu de l'alinéa 10(1)c) de la *Loi sur le patrimoine de l'Ontario*, la Fiducie peut conclure des ententes et des engagements avec les propriétaires de biens immeubles ou les titulaires des droits qui s'y rattachent, et constituer des servitudes avec eux, en vue de la conservation, de la protection et de la préservation du patrimoine de l'Ontario. En vertu du paragraphe 22(1), les servitudes constituées ou les engagements conclus par la Fiducie peuvent être enregistrés sur les biens immeubles visés au bureau d'enregistrement immobilier approprié.

Les servitudes protectrices du patrimoine sont des ententes juridiques volontaires conclues entre les propriétaires de biens patrimoniaux et la Fiducie du patrimoine ontarien. Elles visent à protéger les caractéristiques importantes d'une propriété. Les conditions de la servitude sont enregistrées sur le titre de propriété et s'appliquent au donateur de même qu'à tous les propriétaires futurs. Les servitudes permettent à la Fiducie de protéger un site du patrimoine sans avoir à en devenir propriétaire. Elles offrent aussi l'occasion aux adeptes de la conservation en Ontario de protéger de façon permanente le caractère patrimonial de leurs propriétés, tout en pouvant continuer à en jouir.

Ce document est tiré du registre tenu aux fins de la *Loi sur le patrimoine de l'Ontario*, accessible à partir du site Web de la Fiducie du patrimoine ontarien au [www.heritagetrust.on.ca](http://www.heritagetrust.on.ca).

The applicant(s) hereby applies to the Land Registrar.

**Properties**

*PIN* 68141 - 0354 LT  
*Description* PT MILL PLOT PL 40 PT 3 15R5780 EXCEPT PT 1 15R6183; S/T THE RIGHTS OF OWNERS OF ADJOINING PARCELS, IF ANY UNDER PR46441; EDWARDSBURGH/CARDINAL  
*Address* SPENCERVILLE

**Consideration**

*Consideration* \$ 2.00

**Applicant(s)**

The notice is based on or affects a valid and existing estate, right, interest or equity in land

*Name* ONTARIO HERITAGE TRUST  
*Address for Service* 10 Adelaide Street East, Toronto, Ontario, M5C 1J3  
Attention: Easements Program

This document is not authorized under Power of Attorney by this party.

This document is being authorized by a representative of the Crown.

**Statements**

This notice is pursuant to Section 71 of the Land Titles Act.

This notice is for an indeterminate period

Schedule: See Schedules

**Signed By**

Shawna Helene Olive 5th Floor - 400 University Ave. acting for Signed 2011 04 28  
Toronto Applicant(s)  
M7A 2R9  
*Tel* 4163272424  
*Fax* 4163147038

I have the authority to sign and register the document on behalf of the Applicant(s).

**Submitted By**

MINISTRY OF CITIZENSHIP & IMMIGRATION, 5th Floor - 400 University Ave. 2011 04 28  
CULTURE & TOURISM Toronto  
M7A 2R9  
*Tel* 4163272424  
*Fax* 4163147038

**Fees/Taxes/Payment**

*Statutory Registration Fee* \$60.00  
*Total Paid* \$60.00

**File Number**

*Applicant Client File Number :* REAL/EAS0105

**HERITAGE CONSERVATION EASEMENT AGREEMENT**

DATED this 21<sup>st</sup> day of April, 2011.

**BETWEEN:**

**SPENCERVILLE MILL FOUNDATION**

a non-share corporation incorporated pursuant to Part III of the *Corporations Act*, R.S.O. 1990, c.C-38 (hereinafter called the "Owner")

**OF THE FIRST PART**

– and –

**ONTARIO HERITAGE TRUST**

a body corporate continued by the *Ontario Heritage Act*, R.S.O. 1990, c.O-18, as amended (hereinafter called the "Trust")

**OF THE SECOND PART**

**WHEREAS:**

- A. The Owner is the registered owner of certain lands and premises situated in the Township of Edwardsburgh/Cardinal in the United Counties of Leeds and Grenville municipally known as 11 Water Street, Spencerville, more particularly described in Schedule "A1" attached hereto (the "Property") and on which is erected a heritage building known as the Spencerville Mill (the "Building") as shown on the plan attached as Schedule "A2".
- B. By clause 10(1)(c) of the *Ontario Heritage Act*, R.S.O. 1990, c.O-18 as amended (herein the "Act"), the Trust is entitled to enter into agreements, easements and covenants with owners of real property, or interests therein, for the conservation, preservation and protection of the heritage of Ontario.
- C. By section 22 of the Act, any covenants and easements entered into by the Trust, 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 Trust against the owner or any subsequent owners of the real property, even where the Trust owns no other land which would be accommodated or benefited by such covenants and easements.
- D. The Owner and the Trust recognize the heritage value of the Property as set out in the Statement of Cultural Heritage Value attached hereto as Schedule "B1".
- E. The heritage character defining features of the Property that contribute to its heritage value (the "Heritage Features") are described in Schedule "B2".
- F. The Owner and the Trust have the common purpose of preserving the heritage value of the Property through the protection and conservation of its Heritage Features.
- G. To this end, the Owner and the Trust desire to enter into this agreement (the "Agreement").

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

**1.0 PURPOSE**

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

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

## 2.0 HERITAGE VALUE

### 2.1 Statement of Cultural Heritage Value

The Owner and the Trust agree that the Statement of Cultural Heritage Value (Schedule "B1") explains the heritage value of the Property and that the Heritage Features (Schedule "B2") comprise the features of the Property that are to be conserved under this Agreement in order to preserve and protect the heritage value of the Property.

### 2.2 Baseline Documentation Report

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

### 2.3 No Baseline Documentation Report

If the Baseline Documentation Report has not been approved and signed by the parties as provided for in section 2.2, then the Trust may refuse to consider or grant any approval to be given by the Trust under this Agreement until such time as the Baseline Documentation Report has been approved and signed.

## 3.0 CONSERVATION PRINCIPLES, STANDARDS AND GUIDELINES

3.1 Both the Owner and the Trust in carrying out their respective responsibilities and duties under this Agreement shall, where applicable, be guided by and apply the conservation principles set out in Parks Canada's "Standards and Guidelines for the Conservation of Historic Places in Canada" and recognized heritage conservation best practices (herein the "**Conservation Principles and Practices**"). The Parks Canada Standards for the Conservation of Historic Places in Canada are attached as Schedule "D".

## 4.0 DUTIES OF OWNER

### 4.1 Maintenance

The Owner shall at all times and, subject to compliance with the requirements of section 4.2, maintain the Building in as good and sound a state of repair as a prudent owner would normally do so that no deterioration in the present condition and appearance of the Heritage Features shall take place except for reasonable wear and tear. The Owner's obligation to maintain the Building shall require that the Owner undertake such preventative maintenance, repair, stabilization and replacement whenever necessary to preserve the Building in substantially the same physical condition and state of repair as that existing on the date of this Agreement and to take all reasonable measures to secure and protect the Building from vandalism, fire and damage from inclement weather.

### 4.2 Alterations

The Owner shall not, without the prior written approval of the Trust, undertake or permit any demolition, construction, reconstruction, renovation, restoration, alteration, remodelling of the Building, or any other thing or act which would materially affect the condition, appearance or construction of the Heritage Features. The Owner may, without the prior written approval of the Trust, undertake or permit the repair or refinishing of the Building where damage has resulted from casualty, loss, deterioration or wear and tear, provided that such repair or refinishing is not performed in a manner which would materially affect the condition, appearance or construction of the Heritage Features and the Conservation Principles and Practices are applied where applicable.

#### 4.3 Emergencies

Notwithstanding the provisions of section 4.2, the Owner may undertake such temporary measures in respect of the Building as are reasonably necessary to deal with an emergency situation which puts the security or integrity of the Building at risk of damage or occupants of the Building at risk of harm provided that:

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

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

#### 4.4 Signs and Fixtures

The Owner shall not place or affix on the Building any signs, permanent storm screens, awnings, satellite receiving dishes, or other similar objects and fixtures without the prior written approval of the Trust. Such approval may, in the sole discretion of the Trust and for any reason which the Trust considers necessary, be refused. Notwithstanding the foregoing where the Owner has prepared a sign policy governing the design and placement of signs that has been approved by the Trust, the Owner may place or affix on the Building any sign, placard or plaque that complies with the sign policy without the prior written approval of the Trust.

#### 4.5 Prohibited Activities

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

- (a) grant any easement or right of way;
- (b) erect or remove or permit the erection or removal of any building, sign, fence, or other structure of any type whatsoever except temporary fencing required during construction;
- (c) allow the dumping of soil, rubbish, ashes, garbage, waste or other unsightly, hazardous or offensive materials of any type or description;
- (d) except for the maintenance of existing improvements, allow any changes in the general appearance or topography of the Property, including and without limiting the generality of the foregoing, the construction of drainage ditches, transmission towers and lines, and other similar undertakings as well as the excavation, dredging or removal of loam, gravel, soil, rock, or other materials;
- (e) allow the removal, destruction or cutting of trees, shrubs or other vegetation except as may be necessary for (i) the prevention or treatment of disease, or (ii) other good husbandry practices;
- (f) allow the planting of trees, shrubs or other vegetation which would have the effect of (i) reducing the aesthetics of the Building or the Property, or (ii) causing any damage to the Building; or
- (g) allow any activities, actions or uses detrimental or adverse to water conservation, erosion control or soil conservation.

#### 4.6 Archaeological Resources

In the event that any archaeological resources are uncovered at the Property during the course of any excavations or ground disturbance the Owner shall immediately cease all activities at the specific location where the discovery has exposed buried structural features and/or artifacts and notify the Trust in writing forthwith. The Trust may require that the Owner, at its cost, retain a licensed consulting archaeologist to investigate and document the finds prior to the Owner continuing or allowing the continuance of any excavation or ground disturbance. In the event that human remains are encountered, in addition to any other parties or authorities that the Owner is legally required to contact, the Owner shall also notify the Trust.

## 5.0 OWNER'S RESERVED RIGHTS

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

## 6.0 APPROVALS

### 6.1 Information to be provided

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

- (a) plans, specifications and designs for any proposed work;
- (b) materials samples;
- (c) a work schedule;
- (d) the report of a qualified heritage conservation engineer, architect, archaeologist or consultant; and
- (e) such other reports, studies or tests as may in the circumstances be reasonably required for the Trust to appropriately assess the impact of the proposed work on the Heritage Features.

### 6.2 Matters to be Considered

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

### 6.3 Deemed Approval

Provided that the Owner has first complied with the requirements of section 6.1 to the satisfaction of the Trust, any approval required to be obtained from the Trust under this Agreement shall be deemed to have been given upon the failure of the Trust to respond in writing to a written request for it within sixty (60) days of receiving such request and all of the Information requested by the Trust at its address as set out in section 11.1 of this Agreement.

### 6.4 Conditions of Approval

If the approval of the Trust is given or deemed to have been given under this Agreement 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 comply with all of the conditions of approval specified by the Trust in its approval including the use of materials and methods specified by the Trust in its approval.

### 6.5 Where Owner in Default

In the event that the Owner is in default of any of its obligations under this Agreement and, pursuant to section 10.1, the Trust has notified the Owner of such default, then the Trust may refuse to consider any request for approval submitted by the Owner whether requested before or after such notice of default has been given to the Owner and the deemed approval provisions of section 6.3 shall not apply so long as the Owner is in default.

### 6.6 Effect of Approval

Any approval given by the Trust under this Agreement shall have application only to the requirements of this Agreement and does not relieve the Owner from obtaining any approvals, permits or consents of any authority whether federal, provincial, municipal or otherwise that may be required by any statute, regulation, by-law, guideline or policy or by any other agreement.

## **7.0 INDEMNITY AND INSURANCE**

### **7.1 Indemnity**

The Owner shall hold the Trust and its employees, officers, agents, contractors and representatives harmless against and from any and all liabilities, suits, actions, proceedings, claims, causes, damages, judgments or costs whatsoever (including all costs of defending such claims) arising out of, incidental to, or in connection with any injury or damage to person or property of every nature and kind (including death resulting therefrom), occasioned by any act or omission of the Owner related to this Agreement, save and except for any such liabilities and claims for or in respect of any act, deed, matter or thing made or done by the Trust and its employees, officers, agents, contractors and representatives pursuant to sections 8.4, 9.1 and 10.2 of this Agreement.

### **7.2 Insurance**

7.2.1 The Owner agrees to put in effect and maintain or cause to be put in effect and maintained, at all times, with insurers acceptable to the Trust, the following insurance (collectively the “**Insurance**”):

- (a) Commercial General Liability (“CGL”) coverage of an inclusive limit of not less than Two Million Dollars (\$2,000,000) per occurrence for Property Damage, Third-Party Bodily Injury and Personal Injury with the Trust being an additional insured and including the following policy endorsements: Cross-Liability, Waiver of Subrogation and 30 day notice of cancellation.
- (b) Property insurance to a limit commensurate to the full replacement cost value of the Building on an “All Risks” basis (including earthquake and flood coverage where the Property is located in the designated Ontario earthquake zone) and including the following policy endorsements: Replacement Cost Value, Stated Amount Co-Insurance, Waiver of Subrogation, the Trust as an additional insured and thirty (30) days written notice of cancellation; and
- (c) Such other insurance coverage as the Trust, acting reasonably, requires from time to time in the form, amounts and for insurance risks against which a prudent owner would insure, including but not limited to Builder’s Risk Insurance or Wrap Up Liability Insurance.

The Owner shall deliver to the Trust within three (3) weeks of the execution of this Agreement a certificate or certificates of the Insurance in a form and with limits satisfactory to the Trust, and thereafter evidence satisfactory to the Trust of the renewal of the Insurance shall be delivered to the Trust at least fifteen (15) clear days before the termination thereof.

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

7.2.3 All proceeds receivable by the Owner under the Property Insurance shall, on the written demand and in accordance with the requirements of the Trust, be applied to replacement, rebuilding, restoration or repair of the Building to the fullest extent possible having regard to the particular nature of the Building and the cost of such work. The Owner’s financial liability to replace, rebuild, restore or repair the Building if it has been damaged or destroyed shall not exceed the proceeds receivable by the Owner under the Property Insurance. In the event that the Property Insurance proceeds receivable by the Owner are insufficient to effect a partial or complete restoration of the Building, the Trust shall have the privilege, but not the obligation, of contributing additional monies towards the replacement, rebuilding, restoration, or repair costs in order to effect a partial or complete restoration of the Heritage Features.

7.2.4 The Insurance limits or amounts of insurance specified in clause 7.2.1 (a) that the Owner is required to put in effect may be increased by the Trust from time to time on written notice to the Owner to such limits or amounts that are prudent in the circumstances taking into account inflation, changes in the risks associated with the Property and industry practice.

## **8.0 BUILDING DEMOLITION OR REBUILDING**

### **8.1 Notice of Damage or Destruction**

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

## 8.2 Approval to Demolish

If in the opinion of the Owner the replacement, rebuilding, restoration or repair of the Building which has been damaged or destroyed is impractical because of the financial costs involved or because of the particular nature of the Building, the Owner shall, in writing within forty (40) days of giving the Trust notice under section 8.1, request the Trust's approval to demolish the Building. In the event that the Trust approves or is deemed to approve the demolition of the Building, the Owner shall be entitled to retain any insurance proceeds payable to it as a result of the damage to or destruction of the Building and to demolish the Building.

## 8.3 Rebuilding by Owner

In the event that either the Owner does not request or the Trust does not give the approval referred to in section 8.2, the Owner shall replace, rebuild, restore or repair the Building to the limit of any proceeds receivable under the aforementioned insurance policy or policies on the Building and of any additional monies contributed by the Trust towards the replacement, rebuilding, restoration or repair of the Building to effect a partial or complete restoration of the Heritage Features (in this section 8.0, the "**Work**"). Before the commencement of the Work, the Owner shall submit all plans, designs and specifications for the Work for its written approval within one hundred and thirty-five (135) days of the damage or destruction occurring to the Building. The Owner shall not commence or cause the Work to be commenced before receiving the written approval of the Trust of the plans, designs and specifications for the Work and the Work shall be performed in accordance with the approved plans, designs and specifications and upon such terms and conditions as the Trust may stipulate. The Owner shall cause the Work to be commenced within thirty (30) days of its approval by the Trust and to be completed within nine (9) months of commencement, or as soon as possible thereafter if factors beyond its control or the scope of the Work prevent completion within nine (9) months.

## 8.4 Reconstruction by Trust

8.4.1 In the event that the Owner does not submit a request to demolish the Building or the request to demolish is refused by the Trust and the Owner subsequently fails to submit plans, drawings and specifications for the Work within the period stipulated in section 8.3 which are acceptable to the Trust then the Trust may at its option prepare its own plans, drawings and specifications for the Work (herein the "**Trust's Plans**") and shall deliver a set of the Trust's Plans to the Owner. The Owner shall have thirty (30) days from receiving the Trust's Plans to notify the Trust in writing that it intends to undertake the Work in accordance with Trust's Plans. If the Owner does not so notify the Trust within the said thirty (30) days, the Trust may (but shall not be obligated to) undertake the Work up to the value of any insurance proceeds receivable by the Owner in respect of the Building and of any additional amount that the Trust is prepared to contribute to effect a partial or complete restoration of the Heritage Features. The Owner shall reimburse the Trust for any expenses incurred by the Trust in undertaking the Work, including any professional or consulting costs reasonably incurred in connection with the Work to an amount not to exceed any insurance proceeds receivable by the Owner in respect of the damage to or destruction of the Building.

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

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

## 9.0 **INSPECTION AND PUBLIC VIEWING**

### 9.1 Inspection

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

### 9.2 Public Viewing

9.2.1 The Owner shall ensure that reasonable public access is available to the Property and the Building on a regular basis during normal business hours to permit public appreciation and



interpretation of the Heritage Features, subject to such reasonable restrictions on public access as the Owner may require for business, privacy or security reasons.

9.2.2 The Owner shall, in addition to the requirements of subsection 9.2.1, at the request of the Trust, arrange for the Property and the Heritage Features to be accessible for special event public viewing on at least two (2) occasions during each calendar year and that reasonable prior notice of such special event public viewing be given to the Trust.

## 10.0 REMEDIES OF TRUST

### 10.1 Notice of Default

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

### 10.2 Trust May Rectify Default

If the Owner has not remedied the default or made other arrangements satisfactory to the Trust for remedying the default within the time specified in section 10.1, or if the Owner does not carry out the arrangements to remedy the default within the period of time specified by the Trust, the Trust may enter upon the Property and may carry out the Owner's obligations and the Owner shall reimburse the Trust for any expenses incurred thereby. Such expenses incurred by the Trust shall, until paid to it by the Owner, be a debt owed by the Owner to the Trust and recoverable by the Trust by action in a court of law. The provisions of subsection 8.4.2 shall apply with all necessary changes required by the context to any entry by the Trust onto the Property to remedy the default.

### 10.3 Other Remedies

As damages based upon market value may not be adequate or effective to compensate for destruction of or restoration of the Heritage Features as they existed prior to default or breach of the Agreement, the parties agree that:

- (a) compensation to the Trust in the event of the Owner's default under this Agreement may be based upon market value, restoration or replacement costs whichever, in the opinion of the court, shall better compensate the Trust in the circumstances; and
- (b) in addition and without limiting the scope of the other enforcement rights available to the Trust under this Agreement, the Trust may bring an action or an application for injunctive relief to prohibit or prevent the Owner's default or the continuance of the Owner's default under this Agreement.

## 11.0 NOTICE

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

The Owner:

Spencerville Mill Foundation  
P.O. Box 215  
Spencerville, ON K0E 1X0  
Attention: President  
Telephone: 613-658-5885

The Trust:

Ontario Heritage Trust  
10 Adelaide Street East  
Toronto, ON M5C 1J3  
Attention: Easements Program  
Fax: 416-325-5071

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

## 12.0 PLAQUE AND PUBLICITY

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

## 13.0 GENERAL

### 13.1 Waiver

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

### 13.2 Extension of Time

Time shall be of the essence of this Agreement. Any time limits specified in this Agreement may be extended with the consent in writing of the Trust, but no such extension of time shall operate or be deemed to operate as an extension of any other time limit, and time shall be deemed to remain of the essence of this Agreement notwithstanding any extension of any time limit. Any extension must be in writing and signed by the Trust.

### 13.3 Severability of Covenants

All covenants, easements and restrictions contained in this Agreement shall be severable, and should any covenant, easement or restriction in this Agreement be declared invalid or unenforceable, the validity and enforceability of the remaining covenants, easements and restrictions shall not be affected.

### 13.4 Costs

In the event that a dispute arises between the parties hereto because of this Agreement, each party shall be responsible for its own legal fees, court costs and all other similar expenses that may result from any such dispute except where costs are awarded by a court or a tribunal.

### 13.5 Entirety

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

### 13.6 Subsequent Instruments

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

### 13.7 Notification of Transfer of Title or Possession

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

### 13.8 Agreement to Run with the Property

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

13.9 Priority and Postponement

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

13.10 Assignment

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

13.11 Owner Not Liable

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

13.12 Gender, Number and Joint and Several

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

13.13 Circumstances Beyond the Control of Either Party

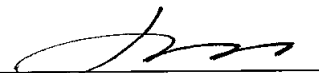
Neither party will be responsible for damage caused by delay or failure to perform under the terms of this Agreement resulting from matters beyond the control of the Trust and the Owner including strike, lockout or any other action arising from a labour dispute, fire, flood, act of God, war, riot or other civil insurrection, lawful act of public authority, or delay or default caused by a common carrier which cannot be reasonably foreseen or provided against.


13.14 Headings

The headings in the body of this Agreement form no part of the Agreement but are inserted for convenience of reference.

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

**ONTARIO HERITAGE TRUST**

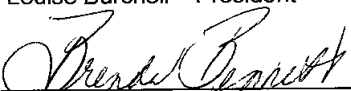
Per:   
Richard Moorhouse – Executive Director

Per:   
Beth Hanna – Director, Heritage Programs and Operations

*We have the authority to bind the Trust.*

**SPENCERVILLE MILL FOUNDATION**

Per:   
Louise Burchell – President

Per:   
Brenda Bennett – Secretary

*We have the authority to bind the Foundation.*

**SCHEDULE "A1"**

**DESCRIPTION OF THE PROPERTY**

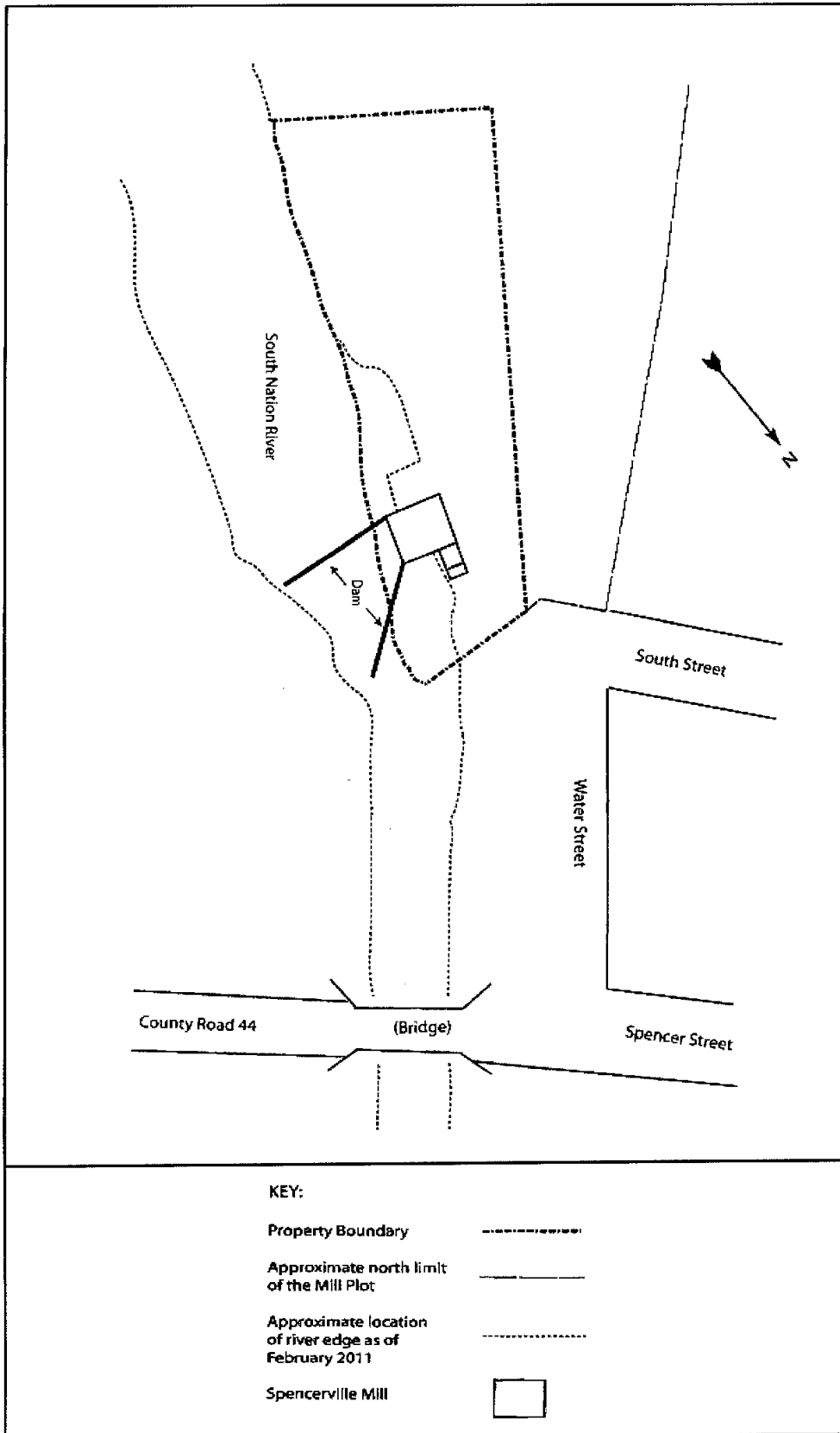
PIN 68141-0354 (LT)

Part Mill Plot, Plan 40  
designated as Part 3 on Plan 15R-5780  
Township of Edwardsburgh/Cardinal  
County of Leeds and Grenville

SAVE AND EXCEPT Part 1 on Plan 15R-6183.

SCHEDULE "A2"

SITE PLAN OF THE PROPERTY



## SCHEDULE "B1"

### STATEMENT OF CULTURAL HERITAGE VALUE

#### **DESCRIPTION OF HISTORIC PLACE:**

The Spencerville Mill is located in the community of Spencerville, at 11 Water Street, approximately 100 metres west of the bridge on Regional Road 44 that spans the South Nation River in the Township of Edwardsburgh/Cardinal. The two-story plus basement fieldstone building was constructed in 1862-64 on the banks of the South Nation River. Two masonry additions adjoin the mill to the east and one modern addition on the west.

#### **STATEMENT OF PROVINCIAL SIGNIFICANCE**

The Spencerville Mill demonstrates the establishment of a mill and associated agricultural village in mid-19<sup>th</sup> century Ontario, which historically had a number of other businesses and small industries that opened around the mill to serve the surrounding agricultural community. The mill contains sufficient milling and power train equipment used as an interpretation tool for visitors who can gain an understanding of a feed mill operation during the 1930s. Given the mill's proximity to the South Nation River and its long use as an industrial site, the mill property possesses high archaeological potential. Mills such as the one in Spencerville were once an extremely common building type found on rivers and streams throughout the province. There are few mills that remain intact in the province; with the Spencerville Mill as the last remaining mill on the South Nation River. The mill also exhibits a significant level of technical achievement by demonstrating the evolution of mill technology in Ontario from undershot waterwheel (medieval system) to turbine (20<sup>th</sup> century), to coal, gasoline, and then electricity. The Spencerville Mill is a recognizable landmark within its region and community.

#### **HERITAGE VALUE:**

##### **Historic Value:**

Spencerville Mill is historically significant for its association with the development of the milling industry in Spencerville, and the establishment of the community. The present mill structure, the second mill structure on the site, was constructed between 1862 and 1864 by Robert Fairbairn. In 1886, a severe fire damaged the building leading to a major reconstruction of the interior and the roof structure. After the building was reconstructed, it was sold to Thomas Bennett. In 1903, Hatch and Barnard rented the property from the Bennett family. This partnership dissolved one year later. In 1912, J.F. Barnard's Sons Limited purchased the property and continued to convert the business from a grist and flour milling operation to a commercial feed mill. The mill became known for the "Grow or Bust" trademark poultry feed which was one of the earliest domestic lines of balanced feeds produced in Canada. In 1934, J.F. Barnard's sons, Percy and Walter, changed the mill from an undershot waterwheel, whose reliability varies with seasonal water levels, to a turbine system.

Spencerville became a regional service centre for agriculture. In the 1930s, Spencerville had a population of approximately 250 and, in addition to the mill, a number of services were available for the agricultural community including a railway depot, post office, blacksmith, tinsmith, and five general stores. The town developed into a farming supply point, a location of wool processing and other small-scaled industries. As the regional economy and milling technology changed, the mill evolved and continued to play an important role in the community. The owners also became wholesalers and distributors of farm merchandise. A hardware store was added to the mill property in 1955. Edwin "Ted" Barnard continued to run the family milling business until it closed in 1972. In 1985, The South Nation River Conservation Foundation (who later changed its name to Eastern Valley Heritage Foundation and finally changed its name to Spencerville Mill Foundation) acquired the Property to preserve the mill and interpret its history.

##### **Architectural Value:**

Spencerville Mill is an example of a mid-19<sup>th</sup> century vernacular building. The two-storey plus basement gray fieldstone (limestone, sandstone and shale) masonry walls of Spencerville Mill dominate the local landscape. The mill is framed with heavy timber construction. The high ceilings and large open spaces of the two upper floors are indicative of the functional requirements of the milling process. There is a room for machinery, belt lines and storage for a range of products. The high ceilings are dictated by the machinery, for example, the grain chutes that require long falls to function properly. The proportions of the building are informed by the power train, scale of operation and spans of timber members. The simple, yet robust exposed wood structure, bare walls and large spans is typical of late 19<sup>th</sup> century mill construction and contributes to the utilitarian character of the spaces. Two stone additions were built on the east side of the mill—one is two storeys and the other is one storey—which utilizes the masonry of the original mill. The building's interior houses some of the original machinery, tools and fitments used in the grist-milling process from the late 19<sup>th</sup> century to the mid-20<sup>th</sup> century such as the single and double roller mills, plate grinder, bolter and scale. The system of wooden chutes and belt driven elevators for the transport of grain and feed are integrated into the building's structure.

**Contextual Value:**

Located alongside the South Nation River, the Spencerville Mill is a local landmark and the focus of a series of attractive riverside vistas. The mill can be seen from the bridge that spans Regional Road 44 on approach from Water Street. The masonry-lined river bank, the concrete dam, steel sluice, masonry and concrete channels and piers form the immediate cultural landscape and are directly associated with the operation of the mill.

:ES March 23, 2011

## SCHEDULE "B2"

### **HERITAGE CHARACTER DEFINING FEATURES (HERITAGE FEATURES)**

The Heritage Features of the Property referred to in the Easement Agreement are comprised of the following elements:

- (a) the exterior of the Building; and
- (b) the interior areas of all floors including the basement, the ground floor, and the second floor.

They include, but are not limited to, the following highlighted elements of the exterior and interior which contribute to its heritage value:

#### Exterior:

- The randomly coursed gray field stone (limestone, sandstone and shale) masonry walls
- The simple cubic massing of the main building
- The spill-way and retaining walls
- The reconstructed timber loading dock (ca. 2001)
- The reconstructed multi-paned paired windows (1999-2001)
- The flat masonry arches supporting some window openings
- The timber lintels supporting some window openings
- The extremely low-pitched gable roof (2 in 12)
- The one-storey and two-storey additions with gable roofs on the east side
- Addition on the west side (ca. 2004-2006)

#### Interior

- All floors
  - The lime-washed exposed masonry walls on all floors
  - The exposed heavy timber frame beams, joists, columns, cross-bracing, roof trusses and rafters on all floors
- Basement
  - The wood stairs
  - The fixed milling equipment including: elevators, power train, universal gear, turbine, belts, fly wheels, main gear assembly, and drive wheels
- Ground Floor
  - The fixed milling equipment including: weigh scale, grain chutes, bagger for buckwheat flour and cornmeal, bucket grain elevators, single and double roller mills and plate grinder
- Second Floor
  - The fixed milling equipment including: power train, and bolter

#### **Contextual:**

- Its proximity to the South Nation River
- Its masonry-lined river bank
- Its concrete dam, steel sluice, masonry and concrete channels and piers
- The view of the mill from the bridge
- The view of the mill from the pond



## SCHEDULE "C"

### BASELINE DOCUMENTATION REPORT OUTLINE

A Baseline Documentation Report (BDR) is the document used by the Ontario Heritage Trust and the owner of an Trust easement property to identify the specific heritage character and condition of a property at the time the heritage conservation easement is established or at an agreed upon time thereafter.

The BDR provides the Trust and the owner with a permanent record of the built heritage resources located on an easement property. It is a separate document, completed after the easement agreement is executed, and which forms a legal reference under the agreement (Section 2.2). Its main purpose is to establish the initial benchmark against which future monitoring of the property is conducted by the Trust. It is the datum against which the maintenance requirement of the easement is measured and is the mechanism by which pre-existing alterations or acknowledged property conditions can be authenticated.

There are a number of internationally accepted formatting and archival standards for architectural documentation including: The Library of Congress, HABS/HAER Field Book (U.S. Parks Service), Public Works Government Services Canada - Heritage Conservation Program, and many others. These organizations standardize information for a number of reasons such as accessibility, conservation, completeness of recording and archival stability. By incorporating the best features of these standards with the legal requirements of the easement agreement, the Trust has developed the following Baseline Documentation Report (BDR) Outline which is used at the Ontario Heritage Trust for cultural heritage easement agreements.

- A. Preface**  
The purpose of the BDR as well as the legal context, author/contributors, summary of property data is included here.
- B. Statement of Cultural Heritage Value**  
This is a narrative explanation of the historical, architectural and contextual significance and heritage value of the property. The Character Defining Features embody this significance and are described in greater detail. This section will also include sources and property evolution/ history of alterations.
- C. Site Plan/Aerial Photograph**  
This plan/image should identify the physical boundaries of the property, the adjacent streets, access and the urban or natural context of the property. It should also be a scaled plan based on a survey for greatest accuracy.
- D. Condition Report**  
This component of the BDR clarifies the various architectural systems and physical condition, with textual descriptions of the materials and construction. This report should identify any major pre-existing deficiencies and cross reference them to the plans and / or photos.
- E. Photographic Key Plan**  
The location and orientation of the camera including the angle relative to the horizon is useful information in re-establishing the views for subsequent monitoring. All images in the BDR should be referenced on the photo key plans(s).
- F. Photographs**  
Two types of photographs are used to visually document the heritage resource.
- Black and White Photography**  
This film type is relatively stable if stored properly. It captures the texture and form of a property much better than colour film. Where necessary, large or medium format photography may be the preferred method of capturing a space or architectural feature. All photography should be as free as possible from optical distortion (i.e. perspective). The ideal elevations are orthogonal though this is not always possible owing to tight geometry and physical access to a property.
- Colour Photography**  
This film captures patina, materials and subtleties of hue that may not be seen in black and white photography. If colour corrected, this medium can provide excellent reference for true colour which may also be provided with Munsell or other well recognized colour reference information. Otherwise the same issues apply as for black and white photography.
- G. Architectural Drawings**  
These may include plans, elevations, sections, and other architectural drawings available

and relevant to the Heritage Character Defining Features.

**H. Acknowledgement Page**

This form is signed and dated by the owner and the Trust. It indicates that both parties agree that the contents of the BDR are accurate to a given date.

**I. Legal Context**

A copy of the entire registered easement agreement is included as an appendix at the back of the BDR.

**J. Copies**

All of the material is then recorded on a CD and included in the BDR as well. It is recognized that this is not a particularly stable format even when kept in the best archival CD sleeve but it is better than not being included. As stipulated in the easement agreement, a hardcopy of the BDR is deposited with the provincial archives.

**A Baseline Documentation Report must be prepared by heritage professionals who have expertise in documenting and assessing heritage resources, their condition and their significance.**

## SCHEDULE "D"

### STANDARDS FOR THE CONSERVATION OF HISTORIC PLACES IN CANADA

Definitions of the terms in italics can be found in the Introduction of the Standards and Guidelines for the Conservation of Historic Places in Canada, as prepared by Parks Canada.<sup>1</sup> The Standards are not presented in a sequential or hierarchical order, and as such, equal consideration should be given to each. All standards for any given type of treatment must therefore be applied simultaneously to a project.

#### **General Standards (all projects)**

1. Conserve the *heritage value* of a historic place. Do not remove, replace, or substantially alter its intact or repairable *character-defining elements*. Do not move a part of a *historic place* if its current location is a *character-defining element*.
2. Conserve changes to a *historic place* which, over time, have become *character-defining elements* in their own right.
3. Conserve *heritage value* by adopting an approach calling for *minimal intervention*.
4. Recognize each *historic place* as a physical record of its time, place and use. Do not create a false sense of historical development by adding elements from other *historic places* or other properties or by combining features of the same property that never coexisted.
5. Find a use for a *historic place* that requires minimal or no change to its *character-defining elements*.
6. Protect and, if necessary, stabilize a *historic place* until any subsequent *intervention* is undertaken. Protect and preserve archaeological resources in place. Where there is potential for disturbance of archaeological resources, take mitigation measures to limit damage and loss of information.
7. Evaluate the existing condition of *character-defining elements* to determine the appropriate intervention needed. Use the gentlest means possible for any intervention. Respect heritage value when undertaking an intervention.
8. Maintain *character-defining elements* on an ongoing basis. Repair *character-defining elements* by reinforcing their materials using recognized conservation methods. Replace in kind any extensively deteriorated or missing parts of *character-defining elements*, where there are surviving prototypes.
9. Make any *intervention* needed to preserve *character-defining elements* physically and visually compatible with the *historic place*, and identifiable upon close inspection. Document any intervention for future reference.

#### **Additional Standards Relating to Rehabilitation**

1. Repair rather than replace *character-defining elements*. Where *character-defining elements* are too severely deteriorated to repair, and where sufficient physical evidence exists, replace them with new elements that match the forms, materials and detailing of sound versions of the same elements. Where there is insufficient physical evidence, make the form, material and detailing of the new elements compatible with the character of the *historic place*.
2. Conserve the heritage value and *character-defining elements* when creating any new additions to a historic place or any related new construction. Make the new work physically and visually compatible with, subordinate to and distinguishable from the historic place.
3. Create any new additions or related new construction so that the essential form and integrity of a *historic place* will not be impaired if the new work is removed in the future.

#### **Additional Standards Relating to Restoration**

1. Repair rather than replace *character-defining elements* from the restoration period. Where *character-defining elements* are too severely deteriorated to repair and where sufficient physical evidence exists, replace them with new elements that match the forms, materials and detailing of sound versions of the same elements.
2. Replace missing features from the restoration period with new features whose forms, materials and detailing are based on sufficient physical, documentary and/or oral evidence.

<sup>1</sup> NOTE: As of the date of this Agreement the complete Parks Canada "Standards and Guidelines for the Conservation of Historic Places in Canada" may be accessed at <http://www.pc.gc.ca/eng/docs/bib-lib/docs3.aspx>