



An agency of the Government of Ontario



Un organisme du gouvernement de l'Ontario

## 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).

<p style="writing-mode: vertical-rl; transform: rotate(180deg);">FOR OFFICE USE ONLY</p> <p style="text-align: center;">566778</p> <p style="text-align: center;">CERTIFICATE OF REGISTRATION</p> <p style="text-align: center;">DEC 13 1991</p> <p style="text-align: center;">LAND REGISTRAR</p> <p style="text-align: center;">FRONTENAC No. 13 KINGSTON</p> <p style="text-align: center;">New Property Identifiers</p> <p style="text-align: right;">Additional: See Schedule <input type="checkbox"/></p>	(1) Registry <input checked="" type="checkbox"/> Land Titles <input type="checkbox"/>	(2) Page 1 of 24 pages	
	(3) Property Identifier(s) Block Property		Additional: See Schedule <input type="checkbox"/>
	(4) Nature of Document HERITAGE EASEMENT AGREEMENT Sec. 22 of the Ontario Heritage Act		
	(5) Consideration TWO----- Dollars \$ 2.00		
(6) Description Part of Farm Lot 22 Concession 1 City of Kingston County of Frontenac Designated as Part 1 on Plan 13R-10245			
Executions	(7) This Document Contains:		
Additional: See Schedule <input type="checkbox"/>	(a) Redescription New Easement Plan/Sketch <input type="checkbox"/>	(b) Schedule for: Description <input type="checkbox"/> Additional Parties <input type="checkbox"/> Other <input checked="" type="checkbox"/>	

(8) This Document provides as follows:

Covenants and easements pursuant to section 22 of the Ontario Heritage Act, R.S.O. 1980, c.337

See Easement Agreement attached

Continued on Schedule

(9) This Document relates to instrument number(s)

(10) Party(ies) (Set out Status or Interest)	Signature(s)	Date of Signature
Name(s) THE ONTARIO HERITAGE FOUNDATION	<i>C. Scott Allington</i>	Y M D 1991 12 10
(the "Foundation") by its solicitor		
C. Scott Allington		

(11) Address for Service 77 Bloor Street West, 2nd Floor, Toronto, Ontario M7A 2R9

(12) Party(ies) (Set out Status or Interest)	Signature(s)	Date of Signature
Name(s)		Y M D

(13) Address for Service

(14) Municipal Address of Property 124 Centre Street Kingston, Ontario	(15) Document Prepared by: Ministry of Culture and Communications, Legal Services Br 77 Bloor Street West, 2nd Floor Toronto, Ontario M7A 2R9	Fees and Tax
	CSC	Registration Fee 25
		Total

**SCHEDULE**

THIS EASEMENT AGREEMENT dated as of the 16th day of August, 1991.

B E T W E E N:

BETH ISRAEL CONGREGATION OF KINGSTON

hereinafter called the "Owner"

OF THE FIRST PART;

- and -

THE ONTARIO HERITAGE FOUNDATION,  
a body corporate continued by  
the Ontario Heritage Act,  
R.S.O. 1980, c. 337,

hereinafter called the "Foundation"

OF THE SECOND PART.

WHEREAS the Owner is the registered owner of certain lands and premises situated in the City of Kingston in the County of Frontenac and Province of Ontario (hereinafter called the "Property"), being composed of part of Farm Lot 22, Concession 1, in the City of Kingston and designated as Part 1 on a Plan of Survey deposited in the land registry office for the Registry Division of Frontenac (No. 13) as Reference Plan 13R-10245;

AND WHEREAS there is situated on the Property a house commonly known as "Otterburn" (hereinafter called "Otterburn"), the location of which is shown on the site plan of the Property attached hereto as Appendix "A";

AND WHEREAS by section 7(c) of the Ontario Heritage Act, R.S.O. 1980, c. 337, one of the objects of the Foundation is to support, encourage and facilitate the conservation, protection and preservation of the heritage of Ontario;

AND WHEREAS by section 10 (1) (b) of the Ontario Heritage Act, the Foundation is entitled to enter into agreements, covenants and easements with owners of real

property, or interests therein, for the conservation, protection and preservation of the heritage of Ontario;

AND WHEREAS by section 22 of the Ontario Heritage Act, such covenants and easements entered into by the Foundation, 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 Foundation or its assignee against the owner or any subsequent owners of the real property, even where the Foundation owns no other land which would be accommodated or benefitted by such covenants and easements;

AND WHEREAS the Owner and the Foundation desire to conserve the aesthetic and scenic character and condition of the Property and the present historical, architectural, aesthetic and scenic character and condition of the exterior of Otterburn together with the interiors of those areas described in Appendix "B" attached hereto and shown in heavy outline on the floor plans contained therein (all of which are hereinafter called the "Heritage Elements");

AND WHEREAS the Owner has, by resolution pursuant to Section 11 of the Religious Organizations' Lands Act, R.S.O. 1980, c. 448, a copy of which is attached hereto as Appendix "C", approved the granting of the easements and the entering into of the covenants herein by the Owner;

AND WHEREAS to this end, the Owner and the Foundation desire to enter into this Easement Agreement (hereinafter called the "Agreement");

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the sum of TWO DOLLARS (\$2.00) 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 easements herein and in further consideration of the mutual covenants and restrictions hereinafter set forth, the Owner and the Foundation agree to abide by the following covenants, easements and restrictions which shall run with the Property forever.

1.0 Duties Of Owner

1.1 Normal Repairs And Alterations

The Owner shall not, except as hereinafter set forth, without the prior written approval of the Foundation, undertake or permit any demolition, construction, reconstruction, alteration, remodelling, or any other thing or act which would materially affect the appearance or construction of the Heritage Elements. The approval required to be obtained from the Foundation herein shall be deemed to have been given upon the failure of the Foundation to respond in writing to a written request for it within sixty (60) days of receiving such request at its address as set out in paragraph 10.2 of this Agreement. If the approval of the Foundation is given or deemed to be 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 or elements of the Heritage Elements damage to which 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 construction or appearance of the Heritage Elements.

1.2 Insurance

The Owner shall at all times during the currency of this Agreement keep Otterburn insured against normal perils that are coverable on an all risk policy basis, including fire, in an amount equal to the replacement cost of Otterburn. The Owner shall have a form as set out in Appendix "D" attached hereto completed and certified by its insurance company and delivered to the Foundation within three (3) weeks of the execution of this Agreement, and thereafter evidence satisfactory to the Foundation of the renewal of insurance shall be delivered to the Foundation at least three (3) clear days before the termination thereof. If the Owner fails to so insure Otterburn, or if any such insurance on Otterburn is cancelled, the Foundation may effect such insurance as the Foundation reasonably deems necessary and any sum paid in so doing shall forthwith be paid by the Owner to the Foundation, or if not, shall be a debt owing to the Foundation and recoverable from the Owner by action in a court of law. All proceeds receivable by the Owner under the aforementioned coverage insurance policy or policies on Otterburn shall, on the written demand and in accordance with the requirements of the Foundation, be applied to

replacement, rebuilding, restoration or repair of Otterburn to the fullest extent possible having regard to the particular nature of Otterburn and the cost of such work. The Owner's financial liability to replace, rebuild, restore or repair Otterburn if it has been damaged or destroyed shall not exceed the proceeds receivable by the Owner under the aforementioned coverage insurance policy or policies. In the event that the proceeds receivable by the Owner under the said insurance policy or policies are insufficient to effect a partial or complete restoration of the Heritage Elements, the Foundation 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 Elements provided that the Foundation shall notify the Owner of the Foundation's intention to do so within forty (40) days after receiving from the Owner (a) the written request for permission to demolish referred to in paragraph 1.3, or (b) all plans and specifications for the replacement, rebuilding, restoration or repair of the Heritage Elements the case may be.

#### 1.3 Demolition

The Owner shall notify the Foundation of any damage or destruction to Otterburn within ten (10) clear days of such damage or destruction occurring. In the event that Otterburn 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 Otterburn, 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 Otterburn, and in the event of receiving the approval in writing of the Foundation, be entitled to retain any proceeds from the insurance hereinbefore mentioned and to demolish Otterburn. 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 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 Otterburn to the limit of any proceeds receivable under the aforementioned insurance policy or policies on Otterburn and of any additional monies

contributed by the Foundation towards the replacement, rebuilding, restoration or repair of the Heritage Elements under the provisions of paragraph 1.2 to effect a partial or complete restoration of Otterburn. Before the commencement of such work, the Owner shall submit all plans and specifications for the replacement, rebuilding, restoration or repair of the Heritage Elements to the Foundation for its written approval within one hundred and thirty-five (135) days of the damage or destruction occurring to Otterburn. A refusal by the Foundation to approve any plans and specifications may be based upon choice of materials, unattractive appearance, nonconforming architectural style, or any other ground or grounds, including but not limited to purely aesthetic grounds, and the determination of the Foundation shall be final. The Owner shall not commence or cause restorative work to be commenced on the Heritage Elements before receiving the written approval of the Foundation of the plans and specifications for it, and such restorative work 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 Heritage Elements 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 Otterburn 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 Heritage Elements pursuant to paragraph 1.4 which are acceptable to the Foundation within one hundred and thirty-five (135) days of the damage or destruction occurring to Otterburn, the Foundation may prepare its own set of plans and specifications for the Heritage Elements. 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

Heritage Elements 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 Otterburn up to the value of any insurance proceeds receivable by the Owner under the aforementioned 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 Heritage Elements. 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 the aforementioned 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 Otterburn 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 under the aforementioned insurance policy or policies and to demolish Otterburn.

#### 1.6 Maintenance Of Otterburn

The Owner shall at all times maintain Otterburn 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 Elements shall take place.

#### 1.7 Signs, Structures, Etc.

The Owner shall not erect or permit the erection on the Property or on Otterburn of any signs, permanent storms, screens or awnings, television aerials or other similar objects without the prior written approval of the Foundation. Such approval may, in the sole discretion of the Foundation and for any reason which the Foundation considers necessary, be refused.

#### 1.8 Activities with respect to the Property

The Owner shall not commit or permit any act of waste on the Property. With respect to the Property, the Owner shall not, except with the prior written approval of the Foundation,

- (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;
- (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 lands, 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 Otterburn or the Property, or (ii) causing any damage to Otterburn;
- (g) allow any activities, actions or uses detrimental or adverse to water conservation, erosion control and soil conservation.

## 2.0 Approvals

2.1 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, but the Foundation's approval shall not be unreasonably withheld, unless otherwise stated.

## 3.0 Remedies Of Foundation

3.1 If the Foundation, in its sole discretion, is of the opinion that the Owner has neglected or refused to perform any of its obligations set out in this Agreement, the 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 within those 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, of which the Foundation shall be the sole and final judge, the Foundation may enter upon the Property 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 owed by the Owner to the Foundation and recoverable by the Foundation by action in a court of law.

3.2 In the event that the Foundation should act under paragraph 1.5 or paragraph 3.1 and enter onto the Property, the Foundation may dismantle any part of the picket fence and the whole or any part of the wheelchair ramp situate in the south-easterly portion of the Property in order to carry out the Owner's obligations. Following the completion of any activity of the Foundation under paragraph 1.5 or paragraph 3.1 which required the dismantling of part of the picket fence and the whole or any part of the wheelchair ramp, the Foundation shall reassemble the picket fence and the wheelchair ramp and any costs incurred in connection with the dismantling and reassembly of the said picket fence and ramp shall be recoverable by the Foundation in accordance with paragraph 1.5 or paragraph 3.1, as the case may be.

#### 4.0 Waiver

4.1 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. Any waiver must be in writing and signed by the Foundation.

#### 5.0 Extension Of Time

5.1 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 both the Owner and the Foundation, 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.

6.0 Use of Property

6.1 The Owner expressly reserves for itself, its heirs, executors, representatives, successors and assigns the right to use the Property for all purposes not inconsistent with this Agreement.

7.0 Inspection Of The Property

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

8.0 Plaque and Publicity

8.1 The Owner agrees to allow the Foundation to erect a plaque on Otterburn, in a tasteful manner and at the Foundation's expense, indicating that the Foundation holds a conservation easement on the Property. The Owner also agrees to allow the Foundation to publicize the existence of the easement.

9.0 Severability Of Covenants

9.1 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 validity and enforceability of the remaining covenants, easements and restrictions shall not be affected.

10.0 Notice

10.1 Except in the event of an interruption in the postal service, any notices, requests for approval or grants of approval (collectively hereinafter referred to as "notice") required under this Agreement shall be delivered in person or sent by pre-paid registered mail addressed to the parties at their respective addresses. In the event that notice is delivered in person, the party receiving the notice shall forthwith acknowledge receipt of the same in writing, and in

that event, the notice shall be deemed to have been received on the date of such acknowledgement. In the event that a party refuses to sign an acknowledgement of receipt of the notice, the person delivering the notice may swear an affidavit of service, and the notice shall be deemed to have been received on the date of service as set out in such affidavit. In the event that notice is sent by pre-paid registered mail, it shall be deemed to have been received on the fourth business day following the day on which the notice was sent.

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

THE OWNER

Beth Israel Congregation  
116 Centre Street  
Kingston, Ontario  
K7L 4E6

Attn: The President

THE FOUNDATION

The Ontario Heritage Foundation,  
77 Bloor Street West,  
Second Floor,  
Toronto, Ontario  
M7A 2R9

Attn: Easements Advisor

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

10.3 In the event of any interruption in the postal service, notice may be given to either party at its respective address as set out in paragraph 10.2, either in person or by special courier. The party receiving the notice shall forthwith acknowledge receipt of the same in writing, and the notice shall be deemed to have been received on the date of such acknowledgement. In the event that either party refuses to sign an acknowledgement of receipt of the notice, the person delivering the notice may swear an affidavit of service, and the notice shall be deemed to have been received on the date of service as set out in such affidavit.

11.0 Costs

11.1 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 expenses which may result from any such dispute.

12.0 Indemnification

12.1 The Owner shall hold the Foundation 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 Foundation, its agents, servants or workmen pursuant to paragraphs 1.5 and 3.0.

13.0 Supplementary Agreement

13.1 When the Foundation has made photographs, drawings, and other material depicting the Property and the Heritage Elements, the Owner shall execute an agreement with respect to the Property and the Heritage Elements which said agreement shall be in the form set out in Appendix "E" attached hereto. The said agreement shall specifically provide for the attachment of photographs, drawings and other material depicting the Property and the Heritage Elements and shall be supplemental hereto and form a part hereof.

14.0 Entirety

14.1 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.

15.0 Subsequent Instruments

15.1 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 the whole or any part of the Property or Otterburn.

15.2 The Owner shall immediately notify the Foundation 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 Otterburn.

16.0 Covenants To Run With The Property

16.1 The covenants, easements and restrictions set out in this Agreement shall be registered on title to the Property by the Foundation and shall run with the Property and enure to the benefit of and be binding upon the parties hereto and their heirs, executors, administrators, successors and assigns as the case may be.

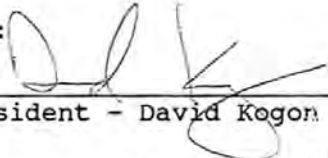
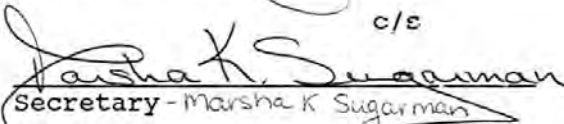
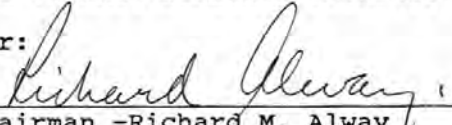
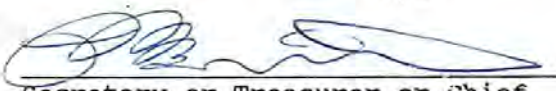
17.0 Headings

17.1 The headings in the body of this Agreement form no part of the Agreement but shall be deemed to be inserted for convenience of reference.

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

SIGNED, SEALED  
AND DELIVERED

in the presence of:

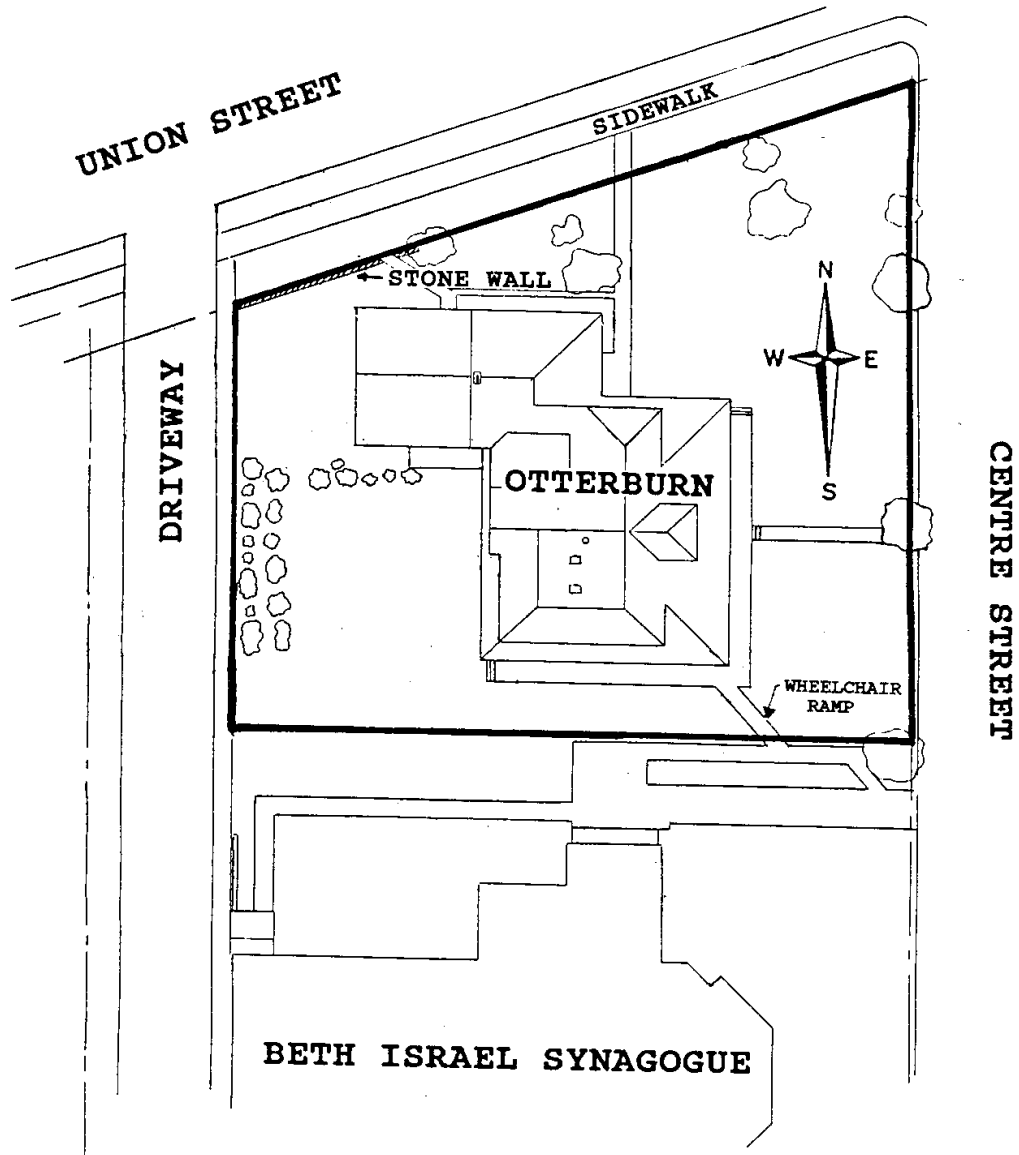
) BETH ISRAEL CONGREGATION OF  
 ) KINGSTON  
 )  
 ) Per:   
 ) \_\_\_\_\_  
 ) President - David Kogon  
 )  
 ) c/s  
 )   
 ) Secretary - Marsha K Sugarman  
 )  
 )  
 ) THE ONTARIO HERITAGE FOUNDATION  
 )  
 ) Per:   
 ) \_\_\_\_\_  
 ) Chairman - Richard M. Alway  
 )  
 ) c/s  
 )   
 ) Secretary or Treasurer or Chief  
 ) Operating Officer  
 )  
 )

APPENDIX "A"

Attached to and forming part of the Easement Agreement between BETH ISRAEL CONGREGATION OF KINGSTON, of the first part, and THE ONTARIO HERITAGE FOUNDATION, of the second part, dated as of the 16th day of August, 1991.

SITE PLAN OF THE PROPERTY

(NOT TO SCALE)



— APPROXIMATE BOUNDARY OF THE PROPERTY

B1

APPENDIX "B"

Attached to and forming part of the Easement Agreement between BETH ISRAEL CONGREGATION OF KINGSTON, of the first part, and THE ONTARIO HERITAGE FOUNDATION, of the second part, dated as of the 16th day of August, 1991.

HERITAGE ELEMENTS - INTERIOR FEATURES

The interior features of the Heritage Elements referred to in this Agreement comprise the interior features of those areas of Otterburn outlined in bold on the floor plans contained in this Appendix "B", composed of the main entrance hall, the stairwell area adjacent to the dining room from the ground floor to and including that part of the second floor indicated on the plan of the second floor of Otterburn. Such interior features include, without limitation, the following:

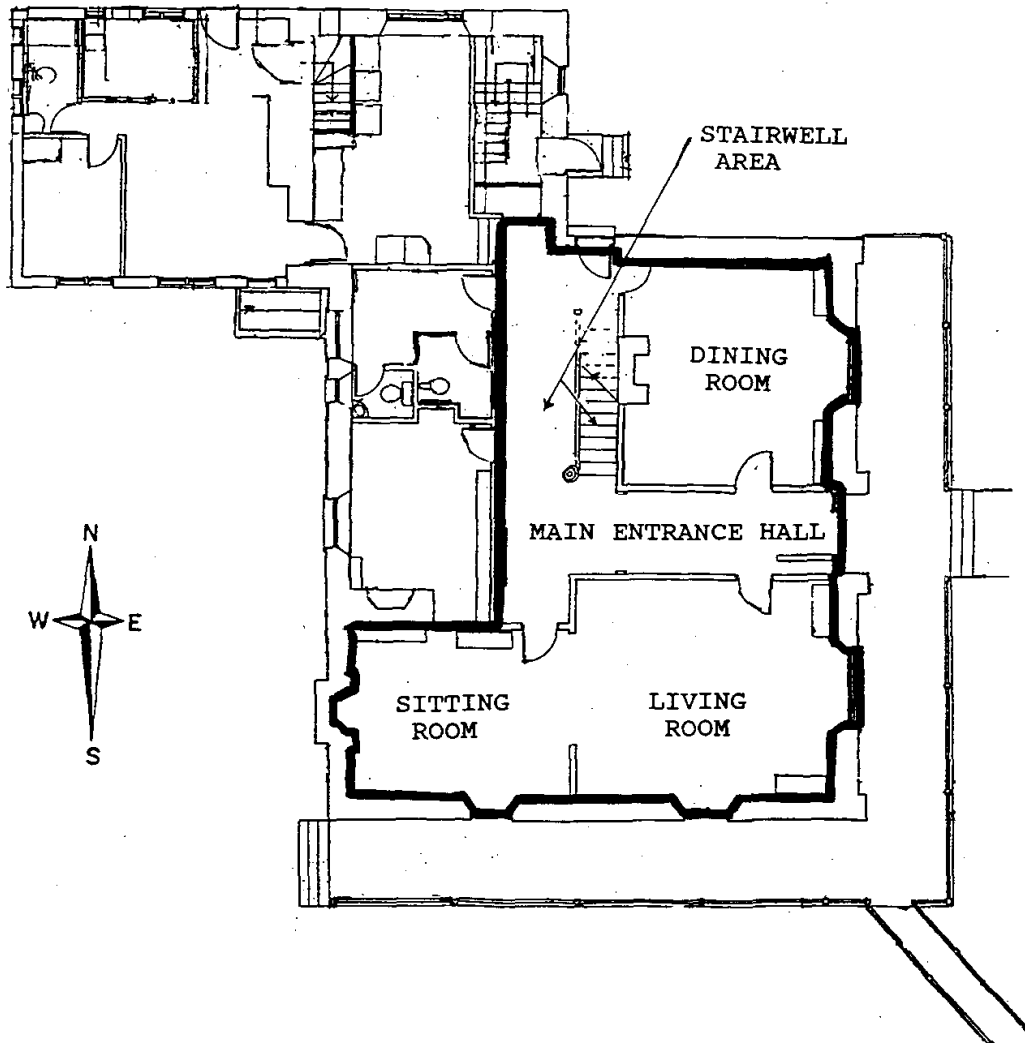
- (i) floors;
- (ii) walls;
- (iii) windows and window sills;
- (iv) doors and door surrounds;
- (v) ceilings;
- (vi) stair treads and stair risers;
- (vii) fireplaces; and
- (viii) all wood work in the aforementioned interior areas not forming a part of the foregoing items.



B2

PLAN OF THE FIRST FLOOR OF OTTERBURN

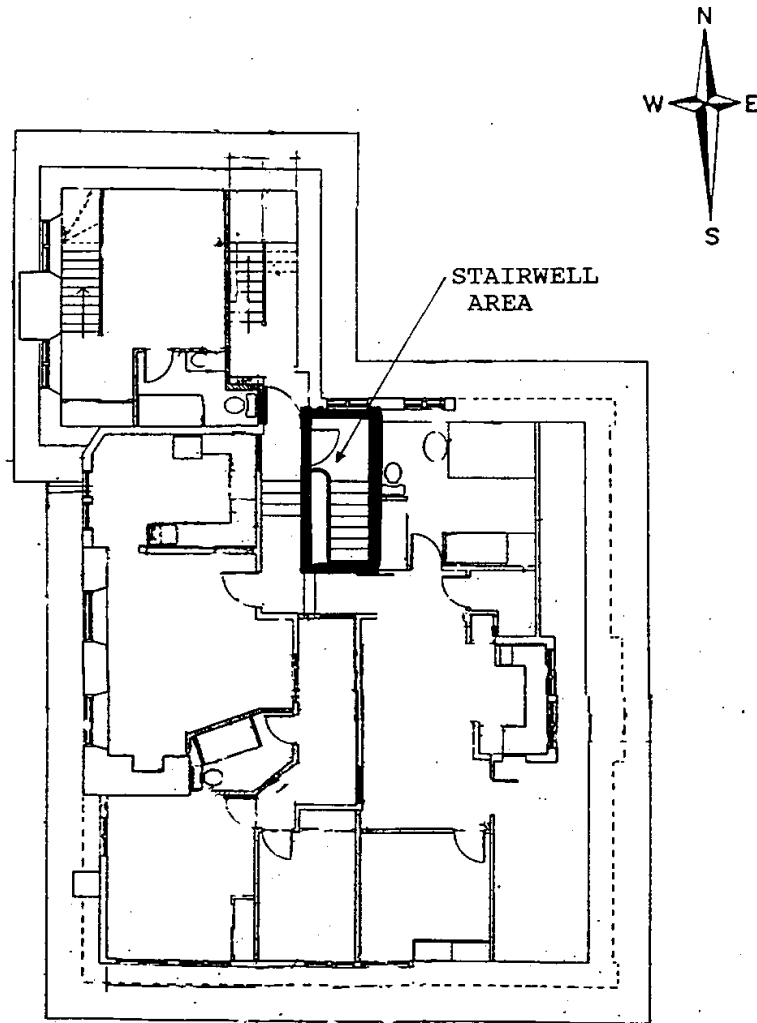
(NOT TO SCALE)



B3

PLAN OF THE SECOND FLOOR OF OTTERBURN

(NOT TO SCALE)



APPENDIX "C"

Attached to and forming part of the Easement Agreement between BETH ISRAEL CONGREGATION OF KINGSTON, of the first part, and THE ONTARIO HERITAGE FOUNDATION, of the second part, dated as of the 16th day of August, 1991.

RESOLUTION OF BETH ISRAEL CONGREGATION OF KINGSTON

R E S O L U T I O N

"WHEREAS Beth Israel Congregation of Kingston has agreed to enter into an Easement Agreement with The Ontario Heritage Foundation in connection with the restoration of Otterburn House;

AND WHEREAS Beth Israel Congregation of Kingston has obtained any consents or approvals required by it in order to enter into a valid and binding legal agreement concerning land;

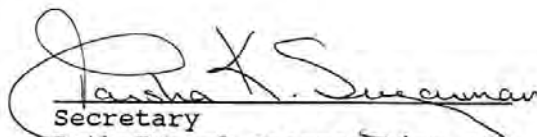
BE IT RESOLVED that Beth Israel Congregation of Kingston:

1. approves, pursuant to section 11 of the Religious Organisation's Lands Act, R. S. O. 1980, c. 448, the granting and entering into of the Heritage Easement Agreement attached hereto as a Schedule and authorizes and directs the duly elected President and Secretary of the Beth Israel Congregation (hereinafter called the "President" and the "Secretary") who have authority to sign the Heritage Easement Agreement on behalf of the congregation to execute same:
2. authorizes and directs the President and Secretary to take all such further or other steps and sign any further or other document that may be necessary or desirable to implement and complete the foregoing."

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The foregoing is certified to be a true copy of a Resolution passed unanimously at a general meeting of Beth Israel Congregation of Kingston duly called and held at the City of Kingston, on the 14<sup>th</sup> day of May, 1989.

Dated the 27th day of September, 1991.

  
Secretary  
Beth Israel Congregation of  
Kingston

**APPENDIX "D"**

Attached to and forming part of the Easement Agreement between BETH ISRAEL CONGREGATION OF KINGSTON, of the first part, and THE ONTARIO HERITAGE FOUNDATION, of the second part, dated as of the 16th day of August, 1991.

**CERTIFICATE OF INSURANCE**

Name of Insurer:
Ins. Agent/Broker:
Address:
Agent/Broker's Tel. No.:

This is to certify that the insurance policy or policies detailed below are in force subject to the terms, conditions and exclusions of the policies.

Kind of Policy	Policy No.	Expiry Date Day/Month/Yr	Amount of Coverage	Form Written
<b>DWELLING POLICY:</b> <input type="checkbox"/> Fire <input type="checkbox"/> All Risk <input type="checkbox"/> Malicious Damage				Optional Loss Settlement Clause <input type="checkbox"/> Yes <input type="checkbox"/> No
<b>COMMERCIAL POLICY:</b> <input type="checkbox"/> Fire <input type="checkbox"/> All Risk <input type="checkbox"/> Extended Coverage <input type="checkbox"/> Malicious Damage				<input type="checkbox"/> Actual Cash Value <input type="checkbox"/> Replacement Cost Value <input type="checkbox"/> Co-Insurance Clause % <input type="checkbox"/> Stated Amount % %

It is hereby provided and agreed that The Ontario Heritage Foundation, 77 Bloor Street West, 2nd Floor, is added to the above Policy or Policies as its interests may appear.

It is also understood and agreed the undersigned certifies if any of these policies are cancelled or materially changed before the expiry date, so as to affect this Certificate; ten days prior written notice of such change or cancellation will be mailed to The Ontario Heritage Foundation at the above address.

It is also understood in the absence of the Insured, or the inability, refusal or neglect of the Insured to give notice of loss or deliver the required Proof of Loss under the Policy or Policies, then The Ontario Heritage Foundation shall forthwith give the notice upon becoming aware of the loss and shall deliver as soon as practicable the Proof of Loss.

\_\_\_\_\_  
 Name of Insured

\_\_\_\_\_  
 Address of Property

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Date

\_\_\_\_\_  
 Name of Insurer

\_\_\_\_\_  
 Signature of Insurer's Official

\_\_\_\_\_

Department or Title

This Certificate must be signed only by an official of the Insurer. Signature of an agent or broker is not acceptable.

APPENDIX "E"

Attached to and forming part of the Easement Agreement between BETH ISRAEL CONGREGATION OF KINGSTON, of the first part, and THE ONTARIO HERITAGE FOUNDATION, of the second part, dated as of the 16th day of August, 1991.

SUPPLEMENTARY AGREEMENT

THIS SUPPLEMENTARY AGREEMENT dated as of the > day of >, 19>.

BETWEEN:

BETH ISRAEL CONGREGATION OF KINGSTON

(hereinafter called the "Owner")

OF THE FIRST PART;

- and -

THE ONTARIO HERITAGE FOUNDATION,  
a body corporate continued by  
the Ontario Heritage Act,  
R.S.O. 1980, c.337.

(hereinafter called the "Foundation")

OF THE SECOND PART.

WHEREAS the Owner is the registered owner of certain lands and premises situated in the City of Kingston in the County of Frontenac and Province of Ontario (hereinafter called the "Property"), being composed of part of Farm Lot 22, Concession 1, in the City of Kingston and designated as Part 1 on a Plan of Survey deposited in the land registry office for the Registry Division of Frontenac (No. 13) as Reference Plan 13R-10245;

AND WHEREAS there is situated on the Property a house commonly known as "Otterburn" (hereinafter called "Otterburn"), the location of which is shown on a sketch of the Property attached hereto as Appendix "A";

AND WHEREAS by section 10(1)(b) of the Ontario Heritage Act, the Foundation is entitled to enter into agreements, covenants and easements with owners of real property, or interests therein, for the conservation, protection and preservation of the heritage of Ontario;

AND WHEREAS by section 22 of the Ontario Heritage Act, such covenants and easements entered into by the Foundation,

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 Foundation or its assignee against the Owner or any subsequent owners of the real property, even where the Foundation owns no other land which would be accommodated or benefitted by such covenants and easements;

AND WHEREAS the Owner and the Foundation entered into an easement agreement (hereinafter called the "Easement Agreement"), dated the > day of >, 19> and registered in the land registry office for the Registry Division of > (No. >) on the > day of >, 19>, as Instrument No. >, for the conservation, protection and preservation of the historical, architectural, aesthetic and scenic character and condition of the exterior of Otterburn together with the interiors of those areas of Otterburn described in Appendix "B" attached hereto and shown in heavy outline on the floor plans contained therein (all of which are hereinafter called the "Heritage Elements");

AND WHEREAS paragraph 13.1 of the said Easement Agreement provided for the execution of an agreement (hereinafter called the "Supplementary Agreement") containing photographs, drawings and other material depicting the Property and the Heritage Elements which would be supplemental to and form a part of the said Easement Agreement;

AND WHEREAS the Foundation has made photographs, drawings and other material depicting the Property and the Heritage Elements;

NOW THEREFORE THIS SUPPLEMENTARY AGREEMENT WITNESSETH that in consideration of the sum of TWO DOLLARS (\$2.00) 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, the Owner and the Foundation agree as follows:

1. The photographs, drawings and other material attached hereto and incorporated herein as Appendix "C", and the originals or facsimiles thereof which are filed in and may be examined at the Archives of Ontario depict the Property and the Heritage Elements and no demolition, construction, reconstruction, alteration, remodelling, or any other thing

or act which would materially affect the appearance or construction of the Property and/or the Heritage Elements as depicted in the said photographs, drawings and material shall be undertaken, permitted or carried out without the prior written approval of the Foundation as described in the Easement Agreement.

2. The provisions of this Supplementary Agreement shall be deemed to be and form part of the Easement Agreement as if originally included therein and all terms, conditions, covenants, easements and restrictions of the said Easement Agreement shall remain in effect and shall continue to run with the Property forever.

3. This Supplementary Agreement and the Easement Agreement of which it forms a part embodies the entire agreement of the parties hereto with regard to the matters dealt with herein and no understandings, representations or agreements, verbal, collateral or otherwise exist between the parties except as herein expressly set out.

4. This Supplementary Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

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

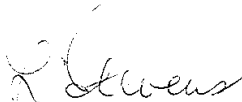
SIGNED, SEALED	)	BETH ISRAEL CONGREGATION OF KINGSTON
AND DELIVERED	)	
in the presence of:)	)	Per:
)	)	
)	)	_____
)	)	President
)	)	
)	)	c/s
)	)	_____
)	)	Secretary
)	)	
)	)	THE ONTARIO HERITAGE FOUNDATION
)	)	Per:
)	)	
)	)	_____
)	)	Chairman - Richard M. Alway
)	)	
)	)	c/s
)	)	_____
)	)	Secretary or Treasurer or
)	)	Chief Operating Officer

PROVINCE OF ONTARIO ) IN THE MATTER OF  
                          ) the Ontario Heritage  
COUNTY OF              ) Act, R.S.O. 1980,  
                          ) c. 337  
FRONTENAC               )  
                          )

C O N S E N T

Pursuant to section 10 (1) (b) of the Ontario Heritage Act, R.S.O. 1980, c. 337, and delegated authority pursuant to section 7 (1) of the Ministry of Citizenship and Culture Act, S.O. 1982, c. 6, I, the undersigned Assistant Deputy Minister, Culture Division, Ministry of Culture and Communications for the Province of Ontario, do hereby consent to the execution by The Ontario Heritage Foundation of the attached Easement Agreement between BETH ISRAEL CONGREGATION OF KINGSTON, of the first part, and THE ONTARIO HERITAGE FOUNDATION, of the second part, dated as of the 16th day of August, 1991, and do hereby certify that the said Easement Agreement is in accordance with policies and priorities for the conservation, protection and preservation of the heritage of Ontario.

DATED at Toronto this 9<sup>th</sup> day of December, 1991.

  
\_\_\_\_\_  
Linda Stevens,  
Assistant Deputy Minister,  
Culture Division,  
Ministry of Culture and  
Communications



Refer to all instructions on reverse side. IN THE MATTER OF THE CONVEYANCE OF (insert brief description of land) Part of Farm Lot 22, Concession 1, City of Kingston, County of Frontenac, designated as Part 1 on Plan 13R-10245

BY (print names of all transferors in full) BETH ISRAEL CONGREGATION OF KINGSTON

TO (see instruction 1 and print names of all transferees in full) THE ONTARIO HERITAGE FOUNDATION

I, (see instruction 2 and print name(s) in full) C. Scott Allington, of the City of Toronto, in the Municipality of Metropolitan Toronto,

MAKE OATH AND SAY THAT:

- 1. I am (place a clear mark within the square opposite that one of the following paragraphs that describes the capacity of the deponent(s)): (see instruction 2)
(a) A person in trust for whom the land conveyed in the above-described conveyance is being conveyed;
(b) A trustee named in the above-described conveyance to whom the land is being conveyed;
(c) A transferee named in the above-described conveyance;
(d) The authorized solicitor acting in this transaction for (insert name(s) of principal(s)) The Ontario Heritage Foundation

(e) The President, Vice-President, Manager, Secretary, Director, or Treasurer authorized to act for (insert name(s) of corporation(s))

(f) A transferee described in paragraph ( ) (insert only one of paragraph (a), (b) or (c) above, as applicable) and am making this affidavit on my own behalf and on behalf of (insert name of spouse) who is my spouse described in paragraph ( ) (insert only one of paragraph (a), (b) or (c) above, as applicable) and as such, I have personal knowledge of the facts herein deposed to.

2. (To be completed where the value of the consideration for the conveyance exceeds \$400,000). n/a

- I have read and considered the definition of "single family residence" set out in clause 1(1)(ja) of the Act. The land conveyed in the above-described conveyance
(a) contains at least one and not more than two single family residences.
(b) does not contain a single family residence.
(c) contains more than two single family residences. (see instruction 3)
Note: Clause 2(1)(d) imposes an additional tax at the rate of one-half of one per cent upon the value of consideration in excess of \$400,000 where the conveyance contains at least one and not more than two single family residences.

3. I have read and considered the definitions of "non-resident corporation" and "non-resident person" set out respectively in clauses 1(1)(f) and (g) of the Act and each of the following persons to whom or in trust for whom the land is being conveyed in the above-described conveyance is a "non-resident corporation" or a "non-resident person" as set out in the Act. (see instructions 4 and 5) none

4. THE TOTAL CONSIDERATION FOR THIS TRANSACTION IS ALLOCATED AS FOLLOWS:

Table with 2 columns: Description and Amount. Rows include: (a) Monies paid or to be paid in cash \$ 2.00; (b) Mortgages (i) Assumed \$ nil; (ii) Given back to vendor \$ nil; (c) Property transferred in exchange \$ nil; (d) Securities transferred to the value of \$ nil; (e) Liens, legacies, annuities and maintenance charges to which transfer is subject \$ nil; (f) Other valuable consideration subject to land transfer tax \$ nil; (g) VALUE OF LAND, BUILDING, FIXTURES AND GOODWILL SUBJECT TO LAND TRANSFER TAX (Total of (a) to (f)) \$ 2.00; (h) VALUE OF ALL CHATTELS - items of tangible personal property \$ nil; (i) Other consideration for transaction not included in (g) or (h) above \$ nil; (j) TOTAL CONSIDERATION \$ 2.00

All Blanks Must Be Filled In. Insert "Nil" Where Applicable.

5. If consideration is nominal, describe relationship between transferor and transferee and state purpose of conveyance. (see instruction 6) heritage preservation easement

6. If the consideration is nominal, is the land subject to any encumbrance? n/a

7. Other remarks and explanations, if necessary. The Transferee of the easement named in the within instrument is an agent of Her Majesty the Queen by section 11(1) of the Ontario Heritage Act, R.S.O. 1980, c.337, accordingly, under section 2(4) of the Land Transfer Tax Act, no tax is payable by the Transferee.

Sworn before me at the City of Toronto in the Municipality of Metropolitan Toronto this 10th day of December 19 91

F. N. Williams

C. Scott Allington signature(s)

A Commissioner for taking Affidavits, etc.

Property Information Record

- A. Describe nature of instrument: HERITAGE EASEMENT AGREEMENT
B. (i) Address of property being conveyed (if available) 124 Centre Street, Kingston, Ontario
(ii) Assessment Roll No. (if available) not available
C. Mailing address(es) for future Notices of Assessment under the Assessment Act for property being conveyed (see instruction 7) fee simple title not being transferred
D. (i) Registration number for last conveyance of property being conveyed (if available) not available
(ii) Legal description of property conveyed: Same as in D.(i) above. Yes No Not known
E. Name(s) and address(es) of each transferee's solicitor: Ministry of Culture and Communications, Legal Services Branch 77 Bloor Street West, 2nd Floor, Ontario M7A 2R9

For Land Registry Office Use Only
Registration No.
Registration Date
Land Registry Office No.

School Tax Support (Voluntary Election) See reverse for explanation

- (a) Are all individual transferees Roman Catholic? Yes No
(b) If Yes, do all individual transferees wish to be Roman Catholic Separate School Supporters? Yes No
(c) Do all individual transferees have French Language Education Rights? Yes No
(d) If Yes, do all individual transferees wish to support the French Language School Board (where established)? Yes No