



**HERITAGE CONSERVATION & MAINTENANCE AGREEMENT**

This agreement made this \_\_\_\_\_ day of \_\_\_\_\_, **2024**.

BETWEEN: Zwaantjen Anne Dondertman & John Norman Laughlin

(Hereinafter referred to as "Property Owner") OF THE FIRST PART

AND

The Corporation of the City of Owen Sound

(Hereinafter referred to as "City") OF THE SECOND PART

WHEREAS the Property Owner is the registered owner of certain lands and premises situated in the City of Owen Sound, County of Grey and Province of Ontario, more particularly described as **Pt Lot 7, Pt Lot 8, Poulett E/S, municipally known as 883 Second Avenue East** (hereinafter called the "Property") on which is erected a heritage building known as **Coates & Best Building** (hereinafter called the "Building"); and

WHEREAS the City has enacted By-law 2009-148 to establish a Heritage Property Tax Relief Program (hereinafter called the "Program") to provide tax refunds in respect of eligible heritage property in accordance with Section 365.2 of the *Municipal Act, 2001*, S.O. 2001, Chapter 25, as amended; and

WHEREAS by Section 37.(1) of the *Ontario Heritage Act*, R.S.O. 1990, c. O.18, as amended, the City is entitled to enter into agreements with owners of real property for the conservation of property of cultural heritage value or interest; and

WHEREAS the Property Owner wishes to enter into an agreement with the City respecting Heritage Conservation and Maintenance of the Property; and

WHEREAS the Property Owner wishes to receive Heritage Property Tax Refunds under the Program and commits to conserving and maintaining the subject property for the duration of this agreement; and

WHEREAS the Property subject of this Agreement was designated under Part IV of the *Ontario Heritage Act* by City of Owen Sound By-law No. **1992-002**; and

WHEREAS the Property Owner and the City recognize the heritage value of the Property as set out in the Statement of Cultural Heritage Value attached hereto as Schedule 'A1'; and

WHEREAS the heritage character defining features of the Building that contribute to the heritage value of the Property (hereinafter called the "Heritage Features") are described in Schedule 'A2' attached hereto; and

WHEREAS the Property Owner has applied for approval of a Heritage Conservation and Maintenance Plan under the Program, the particulars of which are set out in Schedule 'B'; and

NOW THEREFORE THIS AGREEMENT WITNESSETH that the parties hereby covenant, promise, and agree with each other as follows:

## **1. DUTIES OF PROPERTY OWNER**

### **1.1 Preservation and Maintenance of the Building**

The Property Owner shall at all times preserve and maintain the Heritage Features, the Building and the Property in as good and sound a state of repair as a prudent Property Owner would normally do, so that no deterioration in the Building's condition and appearance shall take place, including, without limiting the generality of the foregoing, taking all reasonable measures to secure and protect the Building from vandalism, fire and damage from inclement weather.

### **1.2 Alterations**

The Property Owner shall not undertake or permit any demolition, construction, reconstruction, alteration, remodelling, or any other thing or act which would materially affect the appearance or construction of Heritage Features, without the prior written consent of the Council of the City.

### **1.3 Emergencies**

Notwithstanding the provisions of Clause 1.2, the Property 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, S.O. 1992, c.23* as amended or re-enacted from time to time are complied with; and
- (d) where time permits, the City is consulted before any such measures are undertaken.

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

### **1.4 Insurance**

- (a) The Property Owner shall at all times during the currency of this Agreement keep the Property insured against normal perils that are coverable on an all risk policy basis, including fire, in an amount equal to the replacement cost of the Building. The Property Owner shall provide evidence of insurance, completed and certified by its insurance company and deliver it to the City on execution of this Agreement, and thereafter evidence satisfactory to the City of the renewal of insurance shall be delivered to the City from time to time upon request by the City.
- (b) If the Property Owner fails to so insure the Property, or if any such insurance on the Property is cancelled, the City may effect such insurance in accordance with the requirements of Clause 1.4(a) and any sum paid in so doing shall forthwith be paid by the Property Owner to the City, or if not, shall be a debt owing to the City and recoverable from the Property Owner by action in a court of law or in like manner as municipal taxes.
- (c) All proceeds receivable by the Property Owner under the aforementioned insurance policy or policies on the Property shall, upon the written demand and in accordance with the requirements of the City, be applied to replacement,

rebuilding, restoration or repair of the Heritage Features, to the fullest extent possible having regard to the particular nature of the Building and the cost of such work. The Property 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 Property Owner under the aforementioned insurance policy or policies, provided the Property Owner has complied with the requirements under Clause 1.1. The City acknowledges and agrees that replacement, rebuilding, restoration or repair of the Heritage Features shall only be required to the extent that same is reasonably possible.

- (d) In the event that the proceeds receivable by the Property Owner under the aforementioned insurance policy or policies are insufficient to effect a partial or complete restoration of the Building together with the Heritage Features, the City 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 Building together with their Heritage Features provided that the City shall notify the Property Owner of the City's intention to do so within thirty (30) days after receiving from the Property Owner:
- (i) the written request for permission to demolish referred in Clause 1.4(a);  
or
  - (ii) all plans and specifications for the partial or complete replacement, rebuilding, restoration or repair of the Building together with the Heritage Features;

as the case may be.

### **1.5 Demolition**

- (a) The Property Owner shall notify the City of any damage or destruction affecting the Heritage Features within seven (7) clear days of such damage or destruction occurring.
- (b) In the event that the Building is damaged or destroyed and the replacement, rebuilding, restoration or repair of it is impractical because of the financial costs involved or because of the particular nature of the Building, the Property Owner shall, in writing within ten (10) days of the giving by the Property Owner of notice of such damage or destruction, request written approval of the City to demolish the Building and in the event of receiving the written approval of the City, be entitled to retain any proceeds from the insurance hereinbefore mentioned and to demolish the Building. Such approval shall be deemed to have been received upon failure of the City to respond in writing to a written request for it within ninety (90) days or such extended time as may be agreed upon. This procedure is in addition to and does not replace the requirements and permissions necessary for demolition of any building.

### **1.6 Reconstruction by Property Owner**

- (a) If the City does not grant written approval to demolish, referred to in Clause 1.5(b) or if the Property Owner has not requested written approval to demolish referred to in Clause 1.5(b), the Property Owner shall replace, rebuild, restore or repair the Building and its Heritage Features 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 City towards the replacement, rebuilding, restoration or repair of the Heritage Features under the provisions of Clause 1.4(d) to effect a partial or complete restoration of the Building and its Heritage Features. The Heritage Features shall only be restored to the extent that same is reasonably possible.

- (b) Before the commencement of such work, and within 120 days following the damage or destruction occurring to the Building, the Property Owner shall submit an application for a building permit, together with all plans and specifications for the replacement, rebuilding, restoration or repair of the Building and its Heritage Features. The Property Owner agrees that the City may issue or refuse to issue a building permit based upon choice of materials, unattractive appearance, non-conforming architectural style, or any other ground or grounds, including but not limited to purely aesthetic grounds, and the determination of the City in this regard shall be final.
- (c) The Property Owner shall not commence or cause any restorative work to be commenced on a Building and its Heritage Features prior to receipt of a building permit and any plans and specifications from the City. The restorative work shall be performed upon such terms and conditions as the City may reasonably stipulate in the permit.

### **1.7 Reconstruction by City**

- (a) In the event that the request to demolish the Building is not submitted or is refused pursuant to the provisions of Clause 1.6, and the Property Owner fails to submit a building permit application, together with plans and specifications, within 120 days, or if the Property Owner fails to obtain a building permit, within 210 days, of the damage or destruction occurring to the Building, the City may prepare its own set of plans and specifications for the replacement, rebuilding, restoration or repair of the Building and its Heritage Features. The City shall send a copy of the plans and specifications to the Property Owner.
- (b) The Property Owner shall have thirty (30) days from receipt of the plans and specifications to notify the City in writing that it intends to replace, rebuild, restore or repair the Building and its Heritage Features in accordance with those plans and specifications. If the Property Owner does not so notify the City within the said thirty (30) days, the City may proceed with the replacement, rebuilding, restoration or repair of the Building up to the value of any insurance proceeds receivable by the Property Owner under the aforementioned insurance policy or policies and of any additional amount that the City is prepared to contribute to effect a partial or complete restoration of the Property and its Heritage Features.
- (c) The Property Owner shall reimburse the City for any expenses incurred by the City hereunder to an amount not to exceed any insurance proceeds receivable by the Property Owner under the aforementioned insurance policy or policies.
- (d) In the event that the City does not submit its own plans and specifications to the Property Owner, or does not proceed with the replacement, rebuilding, restoration or repair of the Building within ninety (90) days after it becomes so entitled, unless it is prevented from so doing by the action or omission of the Property Owner or any tenant or agent of the Property Owner, or by any other factors beyond its control, the City's rights under this clause shall automatically terminate and the Property Owner shall be entitled to retain the proceeds receivable under the aforementioned insurance policy or policies and/or to demolish the damaged improvements to the Building, subject to such other requirements and permissions necessary to demolish any building.

## **2. APPROVALS**

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

## **3. REMEDIES**

- (a) If the City, in its sole discretion, is of the opinion that the Property Owner has neglected or refused to perform any of its obligations set out in this Agreement, the City may, in addition to any of its other legal or equitable remedies, serve on the Property Owner a notice setting out particulars of the breach and of the City's estimated maximum costs of remedying the breach. The Property Owner shall have thirty (30) days from receipt of such notice to remedy the breach or make arrangements satisfactory to the City for remedying the breach.
- (b) If within those thirty (30) days the Property Owner has not remedied the breach, or made arrangements satisfactory to the City for remedying the breach, or if the Property Owner does not carry out or complete the said arrangements within a reasonable period of time, of which the City shall be the sole and final judge, the City may enter upon the Property and may carry out the Property Owner's obligations and the Property Owner shall reimburse the City 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 City shall, until paid to it by the Property Owner, be a debt owed by the Property Owner to the City and recoverable by the City by action in a court of law or in like manner as municipal taxes.

## **4. WAIVER**

The failure of the City at any time to require performance by the Property 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 City of the performance of any obligation under this Agreement be taken or be held to be a waiver of the performance of the same or any other obligation under this Agreement at any later time. Any waiver must be in writing and signed by the City.

## **5. 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 both the Property Owner and the City, 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 waiver must be in writing and signed by the City.

## **6. USE OF BUILDING**

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

## **7. INSPECTION OF THE PROPERTY**

The City or its duly authorized representatives or agents shall be permitted at all reasonable times to enter upon and inspect the Property and the Building upon prior written notice to the Property Owner of at least 48 hours.

**8. SEVERABILITY OF COVENANTS**

The Property Owner and the City 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.

**9. NOTICE**

Except in the event of an interruption in the postal service, any notices, requests for approval, or grants of approval (collectively 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 as set out in Clause 10. In the event that notice is delivered in person, the party receiving the notice shall forthwith acknowledge receipt of 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 fifth business day following the day on which the notice was sent.

**10. ADDRESS FOR NOTICE**

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

The Property Owners:

**Zwaantjen Anne Dondertman & John Laughlin  
883 2<sup>nd</sup> Avenue East  
Owen Sound, ON N4K 2H2**

The City: Heritage Co-Ordinator  
Planning Division, Community Services Department  
City of Owen Sound  
808 2<sup>nd</sup> Avenue East  
OWEN SOUND, ON N4K 2H4

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

**11. TRANSFER**

The Owner of the Property shall immediately notify the City in the event that they divest themselves of the fee simple title to or of their possessory interest in the Property or the Building.

**12. ENTIRETY**

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

**13. COVENANTS TO CEASE UPON SALE THE OF PROPERTY**

The covenants, easements and restrictions set out in this Agreement shall cease upon sale of the Property.

**14. HEADINGS**

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

**15. OTHER APPLICABLE LAW**

Nothing in this Agreement excuses the Property Owner from the requirement to comply with other applicable law, including but not limited to the *Ontario Heritage Act*, the *Building Code Act*, the City's Property Standards By-law, the City's Zoning By-law, etc.

Signature of Property Owner: \_\_\_\_\_  
*Zwaantjen Anne Dondertman*

Signature of Property Owner: \_\_\_\_\_  
*John Norman Laughlin*

Signature of Witness: \_\_\_\_\_

Date: \_\_\_\_\_

Signed on behalf of The Corporation of the City of Owen Sound:

\_\_\_\_\_  
*Ian Boddy, Mayor*

\_\_\_\_\_  
*Briana Bloomfield, City Clerk*

Date: \_\_\_\_\_

## **SCHEDULE 'A1'**

### ***Statement of Cultural Heritage Value or Interest***

The façade above the storefront of the Coates and Best Building's design or physical value lies in it being an excellent example of the Italianate style. Typical of this style is the finely detailed window ornamentation with arches brick drip moulds. Decorative wooden cornices top the façade.

Located in downtown Owen Sound, the 2<sup>nd</sup> storey façade of the Coates and Best Buildings has contextual value because it is an important element in maintaining the visual continuity and character of downtown Owen Sound.

## **SCHEDULE 'A2'**

### ***Description of the Property's Heritage Features***

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

- Exterior brickwork of the 2<sup>nd</sup> storey front/ west façade:
- Brick parapet wall
- Flat roof
- 1 over 1 sash windows topped with semi-circular transom windows
- Arched brick drip moulds
- 1<sup>st</sup> storey decorative wooden cornice and brackets
- 2<sup>nd</sup> storey decorative wooden cornice and brackets







**SCHEDULE 'B'**

***Heritage Conservation and Maintenance Plan – Coates & Best Building***

<b>Building Elevation:</b>	<b>Item No.</b>	<b>Historic Feature:</b>	<b>Description of Feature:</b>	<b>Current Condition</b>	<b>Description of Work</b>	<b>Anticipated Completion Date</b>
W	1	Exterior Wall and parapet	Brick exterior of the façade above the storefront	Good	Repointing & repair when and as required	Ongoing
NSEW	2	Roof	Flat roof	Good	Roofing & repair when and as required	Ongoing
W	3	Fenestration	1 over 1 sash windows topped with semi-circular transom windows	Good	Reglazing & repair when and as required	Ongoing
W	4	Architectural features	Arched brick drip moulds, decorative wooden cornices	Very Good	Repainting & repair when and as required	Ongoing