

HERITAGE EASEMENT AGREEMENT

THIS AGREEMENT made this__ day of , 2 0

BETWEEN:

Dr. PETER TYPER
(Hereinafter called the "Owner")

- and-

THE CITY OF PORT COLBORNE
(Hereinafter called the "City")

WHEREAS the Owner is the registered owner of certain lands and premises situated within the City and known municipally as 380 King Street (hereinafter called the "Property"), being Plan 987 to 989 W King St, Lot 9 Pt Lot 8 RP 59R16654 Part 3, City of Port Colborne, Regional Municipality of Niagara, and more particularly described in Schedule "A" attached hereto, and on which there is a designated heritage building (hereinafter called the "Building");

AND WHEREAS one of the purposes of the *Ontario Heritage Act*, R.S.O. 1990, c. 0.18, as amended, is to support, encourage, and facilitate the conservation, protection, and preservation of the heritage of Ontario;

AND WHEREAS by section 37(1) of the *Ontario Heritage Act*, the City is entitled to enter into easements or covenants with owners of real property, or interests therein, for the conservation of buildings of cultural heritage value or interest;

AND WHEREAS by section 37(3) of the *Ontario Heritage Act*, such covenants and easements entered into by the City shall, when registered on title, run with the lands and be enforceable by the City against the Owner or any subsequent Owners of the Property;

AND WHEREAS the Owner and the City desire to conserve the present historical, architectural, contextual, aesthetic, scenic, and heritage characteristics and conditions of the Building on the Property as set out in the "Reasons for Designation" and as depicted in Schedule "B" attached hereto;

AND WHEREAS in furtherance of the foregoing objectives, the Owner and City agree to enter this Easement Agreement (hereinafter called the "Easement 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 City 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 City agree to abide by the following covenants, easements, and restrictions which shall run with the Property forever.

1. REASONS FOR DESIGNATION

1.1. Statement of Reasons

The Owner and the City agree that for the purposes of this Easement Agreement the following statement, attached hereto as Schedule C, (hereinafter called the "Reasons for Designation") sets out the reasons why the Building and/or property has been designated by the City for having cultural heritage value or interest:

1.2 Photographs Relevant to the Duties of the Owner

The Owner and City agree that the photographs, contained in Schedule "B", attached hereto, the originals or facsimiles of which are filed in, and may be examined at, the City or wherever they may be from time to time located, generally depict certain significant features of the appearance or the construction of the Building. The Reasons for Designation and the aforesaid photographs shall be referred to in determining the duties of the Owner under this Easement Agreement.

1.3 Replacement Photographs

When alterations are made to the Building, pursuant to paragraph 2.1, the Owner shall, within ninety (90) days of a request by the City and at the Owner's expense, provide photographs to the City taken from the same vantage point and identifying the same features of the appearance or construction as the photographs contained in Schedule "B" by way of amendment to this Easement Agreement, and shall replace the photographs contained in Schedule "B". After such amendments are made, all references in this Easement Agreement to the photographs contained in Schedule "B" shall be taken to be references to such replacement photographs.

2. DUTIES OF OWNER

2.1 Normal Repairs and Alterations

2.1.1 In accordance with the provisions of the *Ontario Heritage Act*, the Owner shall not undertake or permit any demolition, construction, alteration, remodeling or any other thing or act which would materially affect the features of the appearance or construction of the heritage attributes of the Building, as set out in the Reasons for Designation and as depicted in Schedule "B", without the prior written approval of the Council of the City, in consultation with the Heritage Port Colborne Committee.

2.1.2 If the approval of the Council of the City is given under this paragraph, the Owner, in undertaking or permitting the construction, alteration, remodeling or other thing or act so approved of, the Owner agrees to use materials that are appropriate to the appearance or construction of the Building as set out in the Reasons for Designation, and subject to prior approval by the City, in consultation with the Heritage Port Colborne Committee.

2.2 Insurance

2.2.1 The Owner shall at all times during the currency of this Easement Agreement keep the Building insured against normal perils that are coverable by fire and extended coverage insurance in an amount equal to the replacement cost of the Building. The Owner shall provide the Clerk of the City, within three (3) weeks of the execution of this Easement Agreement, a certified copy of the insurance policy referred to above, or a certificate of insurance, from an insurance company, agent, or broker acceptable to the Clerk of the City. The Owner further agrees to provide written evidence satisfactory to the City of the renewal of insurance to the City at least three (3) clear days before the termination thereof.

2.2.2 If the Owner fails to so insure the Building, or if any such insurance on the Building is cancelled, the City may affect such insurance as the City deems necessary and any sum paid in so doing shall be paid by the Owner to the City, or, if not paid, shall be a debt due and owing to the City and recoverable from the Owner by action in a court of law.

2.2.3 The Owner agrees that all proceeds receivable by the Owner under the insurance policy described in paragraph 2.2.1 shall, on the written demand and in accordance with the requirements of the City, be applied to

replacement, rebuilding, restoration, or repair of the Building to the fullest extent possible having regard to the Reasons for Designation, the particular nature of the Building, and the cost of such work.

2.3 Damage or Destruction

- 2.3.1. The Owner shall notify the City of any damage or destruction to the Building and/or property within ten (10) clear days of such damage or destruction occurring.
- 2.3.2. 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 Owner shall, in writing, within forty (40) days of the giving by the Owner of notice of such damage or destruction, request written approval by the Council of the City to demolish the Building, pursuant to paragraph 2.1.1
- 2.3.3. If the approval of the Council of the City is given or deemed to be given, the Owner shall be entitled to retain any proceeds from the insurance policy described in paragraph 2.2.1 and to demolish the Building.

2.4 Reconstruction by Owner

- 2.4.1. If the Owner has not requested the approval to demolish referred to in paragraph 2.3.2 or if the Council of the City does not give the approval to demolish, the Owner shall replace, rebuild, restore, or repair the Building to the limit of any proceeds receivable under the insurance policy described in 2.2.1 so as to affect the partial or complete restoration of the Building.
- 2.4.2. Before the commencement of such work, the Owner shall submit all plans, drawings, specifications for replacement, rebuilding, restoration, or repair of the Building to the City for its written approval within one-hundred and twenty (120) days of the damage or destruction occurring to the Building. The City, in consultation with Heritage Port Colborne, may refuse to approve any plans and specifications based upon choice of materials, appearance, architectural style or any other ground or grounds including, but not limited to, purely aesthetic grounds, and the determination of the City shall be final.
- 2.4.3. The Owner shall not commence or cause restorative work to be commenced before receiving the written approval of the City of the plans and specifications for it, and such restorative work shall be performed upon such terms and conditions as the City may stipulate. Such approvals shall be deemed to have been received upon failure of the City to respond in writing to a written request for it within thirty (60) days of the receipt of such request by the City.
- 2.4.4. The Owner shall cause all replacement, rebuilding, restoration, and repair work on the Building to be commenced within thirty (30) days of the approval by the City of the plans and specifications for it and to be completed within one (1) year of commencement, or as soon as possible thereafter if factors beyond their control prevent completion within the said one (1) year, and the Owner shall cause all such work to conform to the plans and specifications approved of and terms and conditions stipulated by the City.

2.5 Owner's Failure to Reconstruct

- 2.5.1. In the event that a request to demolish is not submitted or is refused pursuant to the provisions of section 2.3 and the Owner fails to submit plans and specifications pursuant to section 2.4 which are acceptable to the City within one hundred and twenty (120) days of the damage or destruction occurring to the Building, the City may prepare its own set of plans,

drawings, and specifications. The Owner shall have thirty (30) days from receiving a copy of such plans and specifications to notify the City in writing that it intends to replace, rebuild, restore or repair the Building in accordance with those plans and specifications.

- 2.5.2 If the Owner does not so notify the City within the aforementioned thirty (30) days, the City may enter onto the Property and proceed with replacing, rebuilding, restoring or repairing the Building so as to effect the complete restoration of the Building. The Owner shall reimburse the City for all expenses incurred by the City in carrying out such work.

2.6 Building Maintenance

The Owner shall at all times maintain the Building in as good and as sound a state of repair as a prudent 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.

2.7 Signs, Structures, Etc.

- 2.7.1 The Owner shall not erect or permit the erection on the Property or on the Building of any signs, awnings, television aerials or other objects of a similar nature without the prior written approval of the City.

- 2.7.2 Such approval may, in the discretion of the City, in consultation with Heritage Port Colborne, and for any reasons which may detract from the heritage and/or cultural value or interest of the Building or property, be refused provided that with respect to signage to identify the occupant(s) of the Building from time to time, the approval of the City shall not be unreasonably withheld, having regard to its use of the Building, the Reasons for Designation and the photographs contained in Schedule "B" attached hereto.

2.8 No Act of Waste

The Owner shall not commit or permit any act of waste on the Property. In respect to the subject lands, the Owner shall not, except with the prior written approval of the City:

- (a) grant any easement or right-of-way which would adversely affect the easement hereby granted;
- (b) erect or remove or permit the erection or removal of any building, sign, fence or other structure of any type whatsoever, which is included in, or adversely affects, the Reasons for Designation;
- (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 of 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 removals of loam, gravel, soil, rock, sand or other materials;
- (e) allow the planting of trees, shrubs or other vegetation which would have the effect of causing any damages to the Building; and
- (f) allow the removal, destruction or cutting of trees, shrubs or vegetation that are contained in the Reasons for Designation except as may be necessary for:
 - (i) the prevention or treatment of disease, or
 - (ii) other good husbandry practices.

2.9 Breach of Owner's Obligations

2.9.1 If the City, in its sole discretion, is of the opinion that the Owner has neglected or refused to perform any of his or her obligations set out in this Easement Agreement, the City 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 City's estimated maximum cost or 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 City for remedying the breach.

2.9.2 If the Owner has not remedied the breach or made arrangements satisfactory to the City for remedying the breach, or if the Owner does not carry out 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 Owner's obligations and the Owner shall reimburse the City for all expenses incurred thereby. Such expenses incurred by the City shall, until paid to it by the Owner, be a debt owed to the City and recoverable by the City by action in a court of law or in like manner as municipal taxes pursuant to Section 427 of the *Municipal Act*.

2.10 Waiver

The failure of the City at any time to require performance by the Owner of any obligation under this Easement 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 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 City.

2.11 Extension of Time

Time shall be of the essence of this Easement Agreement. Any time limits specified in this Easement Agreement may be extended with the consent in writing of both the 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 Easement Agreement notwithstanding any extension of any time limit.

2.12 Emergencies

Notwithstanding the provisions of paragraph 2.1, it is understood and agreed that the Owner may undertake such temporary measures in respect of the Building as are:

- (a) in keeping with the intentions of this Easement Agreement;
- (b) consistent with the conservation of the Building, and
- (c) reasonably necessary to deal with an emergency which puts the security of integrity of the Building or occupants of the Building at risk of damage, provided that the *Building Code Act*, 1992, S.O. 1992, c. 23, as amended, or re-enacted from time to time, is complied with.

3. USE OF PROPERTY/BUILDING

3.1 No Inconsistent Use

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

4. INSPECTION OF PROPERTY

4.1 Inspection by City at All Reasonable Times

The City or its representatives shall be permitted at all reasonable times to enter upon and inspect the Property and the Building upon prior written notice to the Owner of at least forty- eight (48) hours.

4.2 Emergency Inspection

Notwithstanding the requirement for notice in paragraph 4.1, should the City, in its sole and absolute discretion, determine that there is an emergency situation at the Property or with the Building, the City or its representatives shall be permitted to enter upon the Property or into the Building in order to carry out such inspections as may be necessary and warranted.

5. NOTICE

5.1 Addresses and Contacts of Parties

(a) If any notice is required to be given by the City to the Owner with respect to this Easement Agreement, such notice shall be mailed, delivered, or sent by facsimile transmission to:

Dr. Peter Typer
380 King Street
Port Colborne, ON
L3K 4H4

(b) If any notice is required to be given by the Owner to the City with respect to this Easement Agreement, such notice shall be mailed, delivered, or sent by facsimile transmission to:

City of Port Colborne
66 Charlotte Street Port
Colborne, Ontario
L3K 3C8

Attention: City Clerk

or such other addresses of which the City has notified the Owner, in writing, and any such notice mailed, delivered, or faxed shall be deemed good and sufficient notice under the terms of this Easement Agreement.

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

5.2 Service Where Postal Service is Interrupted

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 5.1, either in person or by special courier. The party receiving the notice shall indicate the receipt of it by signing a form of acknowledgment of receipt, and the notice shall be deemed to have been received on the date on which the form of acknowledgment of receipt was signed. In the event that either party refuses to sign an acknowledgment of receipt of the notice, the person delivering the notice may swear an affidavit of service, and the notices shall be presumed to have been received on the date of service as set out in such affidavit.

5.3 Notice in Subsequent Instruments

Notice of these covenants, easements, and restrictions shall be inserted by the Owner in any subsequent deed or other legal instrument by which they divest themselves either of the fee simple title to or of their possessory interest in the

Property or the Building.

5.4 Notice to City

The Owner shall notify the City in the event that it divests itself of the fee simple title to or of its possessory interest in the Property or Building.

6. COSTS

In the event that a dispute arises between either of the parties hereto because of this Easement Agreement, the Owner shall be responsible for legal fees, court costs and all other similar type expenses which may result from such dispute.

7. INDEMNIFICATION

7.1 Non-Liability of City

The Owner shall hold the City harmless against and from any and all liabilities, suits, actions, proceedings, claims, causes, damages, judgements or costs whatsoever (including all costs of defending such claims) arising out of, incidental to, or in connection with any injury or damage to person or property of every nature and kind (including any death resulting therefrom), occasioned by anything done pursuant to this Easement Agreement.

8. ENTIRE AGREEMENT

8.1 No Extraneous Agreements Between Parties

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

8.2 Amendment and Modification Only by Written Agreement

No amendment, supplement, waiver or consent provided for by the provisions of this Easement Agreement shall be effective unless in writing and signed by the party against whom enforcement of the amendment, supplement, waiver or consent is sought

9. INTERPRETATION

9.1 Interpretation of Agreement

- (a) Part numbers and headings, subheadings and section, subsection, clause and paragraph numbers are inserted for convenience of reference only and shall not affect the construction or interpretation of this Easement Agreement.
- (b) This Easement Agreement shall be construed with all changes in number and gender as may be required.
- (c) Every provision of this Easement Agreement by which the Owner is obligated in any way shall be deemed to include the words "at the expense of the Owner" unless the context provides otherwise.
- (d) References herein to any statute or any provision thereof include such statute or provision thereof as amended, revised, re-enacted and/or consolidated from time to time and any successor statute thereto.
- (e) All obligations herein contained, although not expressed to be covenants, shall be deemed to be covenants.
- (f) Whenever a statement or provision in this Easement Agreement is following by words denoting inclusion or example and then a list of or reference to specific items, such list or reference shall not be read so as to limit the generality of that statement or provision, even if words such as "without

limiting the generality of the foregoing" do not precede such list or reference.

9.2 Proper Covenants Not to Terminate

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

9.3 Covenants to Run with Property

The covenants, easements and restrictions set out in this Easement Agreement shall run with the property and shall ensure to the benefit of and be binding upon the Owner and upon the City and their respective heirs, executors, administrators, successors and assigns as the case may be.

9.4 Governing Law

This Easement Agreement shall be interpreted under and is governed by the laws of the Province of Ontario.

10. TERMINATION

10.1 Term of Agreement

Notwithstanding any other provision of this agreement, this Agreement shall remain in force and effect until one of the following occurs:

- a) This Agreement is repealed by the parties.
- b) Approval to demolish pursuant to section 2.3 is granted.
- c) If no funds are provided for the Heritage Tax Rebate Program or the Heritage Tax Rebate Program is eliminated by the City, the Owner may request the City terminate this Agreement.

11. GENERAL

11.1 Registration of Agreement

The Owner consents to the registration of this Easement Agreement and any schedules attached hereto on title to the lands and agrees that such registration shall be at the instance of the City and at its sole and absolute discretion. The Owner covenants and agrees to pay all costs associated with the preparation and registration of this Easement Agreement, as well as other costs incurred by the City as a result of the registration of any other documents pertaining to this Easement Agreement, including but not limited to, any amendment thereto.

11.2 Postponements

The Owner hereby agrees to procure and provide to the City any postponement agreements which the City considers necessary to ensure that this Easement Agreement shall have a priority over any other interest in the Property.

12. SCHEDULES

The following schedules are attached hereto and form part of this Easement

Agreement: "Schedule A" Legal Description of the Lands
"Schedule B" being photographs of the Building
"Schedule C" Reasons for Designation

IT IS HEREBY DECLARED THAT this Easement Agreement and the covenants, provisions, conditions, and schedules herein contained shall be binding upon the parties hereto, their successors and assigns.

IN WITNESS WHEREOF the Parties hereto have hereunto affixed their corporate seals duly attested to by their proper signing officers in that behalf.

SIGNED, SEALED and DELIVERED

X

Peter Typer
Owner

X

Witness

The City of Port Colborne

X

William C. Steele
Mayor

X

Witness

X

Nicole Rubli
Acting City Clerk

X

Witness

SCHEDULE "A"

LEGAL DESCRIPTION

ALL AND SINGULAR the certain parcel or tract of land and premises situate, lying, and being in the City of Port Colborne, in the Regional Municipality of Niagara, formerly in the Township of Humberstone, and being Plan 987 to 989 W King St, Lot 9 Pt Lot 8 RP 59R16654 Part 3, City of Port Colborne, Regional Municipality of Niagara, municipally known as 380 King Street.

SCHEDULE "B"



The East sides of building. Shown is the large verandah and field stone wall with the rounded wooden pillars; the "tower" ; and the rounded arch window on the first floor.

SCHEDULE "C"

RECORD OF DESIGNATION

Name of Municipality:	City of Port Colborne
Municipal Address of Property: Owner of Property: (As of May 26 th , 2022)	380 King Street, Port Colborne Dr. Peter J. Typer
Address of Owner:	380 King Street, Port Colborne December 23, 1992
Date of service of Notice Of Intention to Designate:	
Dates of publication of Notice of Intention:	1) December 23, 1992 2) December 30, 1992 3) January 6, 1993
Date of Designation By-law:	January 25, 1993 (2831/10/93)
Reason for Designation:	

ARCHITECTURE

The house is the only example in Port Colborne of the Romanesque Revival style in both shape (broken wall lines, bay windows, and tower), and in the choice of materials. These included the dark red brick, heavy cut stone lintels and sills, and the unglazed terracotta tiles set just below the eaves.

The large verandah, with its field stone wall and raised ribbon mortar joints is derived from the Queen Anne period. The general shape of the verandah, especially the circular portion surrounding the octagonal tower is very typical of that style, as are the simple rounded wooden pillars.

The truncated hip roof, with its several dormers, was covered with red painted galvanized steel tiles (rectangular on the main roof, and fish scales on the tower), three-dimensional sheet metal cresting and the ornament surmounting the tower roof (incorporating a six-pointed star). Of special note are the triangular dormers and windows in the tower roof.

Two other distinctive features of the house are: one; the wide rounded arch window on the first floor, with its etched leaded glass, and two; the triangular multi-paned window of the attic, with its diagonal muntins.

Interior features of note include the ornate wood trim and doors with egg and dart motif and/or inset leaded glass, the wooden archway with classical columns located in the waiting room at the north-east corner of the first floor, the fireplace located in the same room, and ornate plaster cove moldings. The interior egg and dart motif reflects the pattern of the exterior terracotta tiles.

HISTORY

The property is part of a parcel of land that at one time belonged to William Hamilton Merritt. In 1907, Thomas Euphronius Reeb (a member of the Reeb family, one of the earliest families to settle this area) purchased the land and erected the present building. In 1941 John Horne Jr., a well-known developer and council man purchased the property and converted the building to a series of apartments, for a time occupied by teachers at the local school, and later by the Red Cross.

