

APPENDIX B

THIS HERITAGE EASEMENT AGREEMENT made this 24th day of October, 2018

BETWEEN:

THE CORPORATION OF THE TOWN OF OAKVILLE
(hereinafter referred to as "the Town") and

Zancor Oakville Ltd.
(hereinafter referred to as the "Owner")

WHEREAS the Owner owns a building of cultural heritage value called the "Caleb Smith House", which is referred to for the purpose of this Heritage Easement Agreement ("HEA") as the "Smith House", which is to be designated under Part IV of the *Ontario Heritage Act*, R.S.O. 1990, c. 0.18 once the "Work" under this HEA is completed and the Smith House is moved to its final location.

AND WHEREAS the Owner is the owner of lands and premises situated in the Town of Oakville, Regional Municipality of Halton, Province of Ontario, firstly the parcel known as Part of Lot 31, Concession 1 Trafalgar SDS, designated as Part 3 on Plan 20R-20816; Town of Oakville, municipally known as 2460 Old Bronte Road, (hereinafter referred to as "the Original Location") on which the Smith House is presently located and secondly the parcel known as Part of Lot 31, Concession 1 Trafalgar SDS, designated as Part 1 on Plan 20R-21090; Town of Oakville, municipally known as 2468 Old Bronte Road, (hereinafter referred to as the "Final Location") on which the Smith House is to be permanently located, both being more particularly described in Schedule "A" to this HEA;

AND WHEREAS one of the purposes of the *Ontario Heritage Act* is to support, encourage and facilitate the conservation, protection, and preservation of Ontario's cultural heritage resources such as the Smith House;

AND WHEREAS by subsection 37(1) of the *Ontario Heritage Act*, the Town may enter into easements or covenants with owners of real property or persons having interests therein, for the conservation of buildings of cultural heritage value or interest;

AND WHEREAS by subsection 37(3) of the *Ontario Heritage Act*, such easements and covenants, when registered in the proper Land Registry Office against the real property affected by them shall run with the real property and may be enforced by the Town or its assignee against the owners or any subsequent owners of the real property, even where the Town owns no other land which would be accommodated or benefited by such covenants or easements;

AND WHEREAS the Town and Owner desire, in this HEA, to conserve the elements of cultural heritage value of the Smith House as described in the "Heritage Impact Assessment: 2444, 2454 & 2460 Old Bronte Road" completed by ERA Architects Inc. and issued on June 14, 2018 (hereinafter referred to as the "Heritage Impact Assessment", and in the "Caleb Smith House Conservation Plan: 2460 Old Bronte Road, Oakville, Ontario" completed by ERA Architects Inc. and issued on August 10, 2018 (hereinafter referred to as the "Conservation Plan"), and in the "Salvage and Storage Requirements" attached as Schedule "B", as well as to secure the final location for the Smith House at the Final location.

THEREFORE the parties agree as follows:

1.0 RECITALS, SCHEDULES, AND REASONS FOR IDENTIFICATION

- 1.1 The Recitals and Schedules shall form part of this HEA.
- 1.2 The Owner and the Town agree that for the purposes of this HEA, the Heritage Impact Assessment sets out the reasons why the Smith House has been identified by the Town as having cultural heritage value.
- 1.3 Further, the Owner and the Town agree that for the purposes of this HEA, the Conservation Plan sets out how the Smith House is to be relocated and conserved on the property.
- 1.4 Further, the Owner and the Town agree that for the purposes of this HEA, the photographs numbered IMG_2835 to IMG_2926, dated February 27, 2018 and taken by Carolyn Van Sligtenhorst, and the photos numbered DSC_0032 to DSC_0203, dated February 27, 2018 and taken by Elaine Eigl, that are in the custody of the Planning Services Department of the Town, show the state of the Smith House prior to the undertaking of the works outlined in sections 2.2, 2.3, 2.4, 2.5 and 2.6 of this HEA and depict heritage attributes and additional documentation of the “as-found” condition of the Smith House at the date of the HEA.
- 1.5 The Owner and the Town agree that the Town will designate the Smith House under Part IV of the *Ontario Heritage Act* once it is in the Final Location and that such designation is to occur prior to the occupancy of the Smith House in the Final Location.
- 1.6 Following the relocation and restoration of the Smith House in accordance with this HEA, the Town shall be permitted to take replacement photographs to those mentioned in section 1.4 above, identifying the same features as in the original photographs. The new photographs shall be numbered, dated, have the name of the photographer on them and be kept on file with the Town and all references in this HEA to the photographs shall then be taken to be references to such replacement photographs.

2.0 DUTIES OF THE OWNER

Alterations

- 2.1 The Owner shall not, without the prior written approval of the Town, undertake or permit any demolition, repair, construction, alteration, remodelling, restoration, relocation or any other thing or act which would materially affect the heritage features of the Smith House as described in the Heritage Impact Assessment and in the Conservation Plan and as may be depicted in the photographs referred to in section 1.4.

Permitted Alterations and Relocation

- 2.2 The Owner shall relocate the Smith House in accordance with the Conservation Plan.
- 2.3 The Owner shall ensure the following with respect to the relocation of the Smith House:

- a) The relocation is monitored by a heritage consultant (hereafter "Heritage Expert") with qualifications and expertise in heritage matters acceptable to the Manager of Policy and Heritage Planning;
- b) At least forty-eight (48) hours' notice shall be provided to the Manager of Policy and Heritage Planning prior to the relocation;
- c) The relocation is performed in accordance with the methodology recommended in the Conservation Plan to avoid damage to the Smith House;
- d) The Smith House shall be properly secured and insured as provided in sections 2.9, 2.10 and 2.13 of this HEA;
- e) Upon completion of the relocation of the Smith House, the Heritage Expert shall inspect the Smith House to determine that it has been properly relocated in accordance with the Conservation Plan, is intact and that no further work is required to appropriately situate the Smith House; and
- f) Upon completion of the relocation of the Smith House, the Heritage Expert shall provide a letter certifying that the Smith House has been properly relocated in accordance with the Conservation Plan, is intact and that no further work is required to appropriately situate the Smith House.

- 2.4 The lakestone and the bowed rafters on the Original Location referred to in the Conservation Plan shall be salvaged, conserved and reused in accordance with Schedule "B".
- 2.5 Upon completion of the relocation and certification by the Heritage Expert, as required in sections 2.2 and 2.3, the Owner shall restore the Smith House in accordance with the Conservation Plan.
- 2.6 The Owner shall install a metal historical plaque to explain the significance of the Smith House. Prior to installation, the material, design, content and location of the plaque must be approved by the Manager of Policy Planning and Heritage.
- 2.7 If, prior to the commencement of the work contemplated in sections 2.2, 2.3, 2.4, 2.5 and 2.6 the Owner desires to make revisions to this proposed work, written permission must first be obtained from the Town.
- 2.8 The Owner may construct a new rear addition on the Smith House, provided that the new addition does not have a negative impact on the cultural heritage value of the Smith House, as referred to in the Conservation Plan and the Heritage Impact Assessment, and provided that the Owner first receives written approval from the Town.

Security and Breach of Owner's Obligations

- 2.9 Immediately upon execution of this HEA, the Owner shall provide the Town with a \$381,940 security in order to secure the Owner's obligations hereunder. The amount of the security is based on an estimate of the full cost of work to be performed with respect to the Smith House,

including its relocation.

- 2.10 The security under section 2.9 shall be provided from a Canadian Chartered Bank and in form and content satisfactory to the Town Treasurer.
- 2.11 If the Town is of the opinion, reasonably held, that the Owner has failed to perform any of its obligations set out in this HEA, in addition to any of its other legal or equitable remedies, the Town may serve on the Owner a notice setting out particulars of the breach and of the Town's estimated costs of remedying the breach. The Owner shall have ninety (90) days from receipt of such notice to remedy the breach or make arrangements satisfactory to the Town for remedy of the breach, or the Town may draw on the security to the amount of the actual cost of remedying the breach and may enter upon the Original Location and the Final Location to complete the Owner's obligations. Any expenses reasonably incurred by the Town in completing the obligations of the Owner over and above the security provided shall be a debt owed by the Owner to the Town and recoverable by the Town by action in a court of law or may be added as an additional charge by the Town on the Property Taxes for the lands described in Schedule "A", and collected in a similar manner as municipal taxes.
- 2.12 The security shall be released in stages by the Town to the Owner and the security, in whole or in part, shall not be reassigned to a third party. The \$381,940 shall be released in stages as the work contemplated in the list of stages below is certified as complete by the Heritage Expert and to the satisfaction of the Manager of Policy Planning and Heritage:
- a) An installment of \$246,690 is to be released after the demolition of the one-storey wings not proposed to be retained in accordance with the Conservation Plan has been completed and after the house has been successfully lifted and relocated to the Final Location in accordance with sections 2.2 and 2.3 and has been properly secured on the new footings in this location and an inspection of the Smith House by the Heritage Expert has taken place and a letter from the Heritage Expert has been submitted certifying that the Smith House has been properly relocated; and
 - b) The remainder of the security is to be released after the remaining restoration work has been completed in accordance with section 2.5, the metal historical plaque has been installed in accordance with section 2.6 and an inspection of the Smith House by the Heritage Expert has taken place and a letter from the Heritage Expert has been submitted certifying that the Smith House has been properly restored in accordance with the Conservation Plan and that no further work is required to situate the Smith House in a safe and secure manner.

Insurance

- 2.13 The Owner shall at all times keep the Smith House insured against normal perils that are coverable by fire and extended coverage insurance in an amount equal to the replacement cost of the Smith House as if it had been properly relocated, is intact and is restored in accordance with the Conservation Plan. The Town shall be an additional named insured in the insurance policy.

- 2.14 Upon execution of this HEA, the Owner shall deliver to the Town Treasurer a certified copy of the insurance policy, with limits and with a company that is acceptable to the Town Treasurer. At least three (3) weeks before the expiry of this policy, the Owner shall provide evidence of renewal of said policy satisfactory to the Treasurer.
- 2.15 If the Owner fails to insure the Smith House, as requested in section 2.13, or if any such insurance on the Smith House is cancelled or terminated, the Town may obtain such insurance as the Town deems necessary in an amount equal to the replacement cost as described in section 2.13. Any sum paid in so doing shall forthwith be paid by the Owner to the Town or, if not, shall be a debt due and owing to the Town and recoverable from the Owner by action in a court of law or may be added as an additional charge by the Town on the Property Taxes for the lands described in Schedule "A" and collected in a similar manner as municipal taxes.
- 2.16 All proceeds receivable by the Owner under any insurance policy on the Smith House shall be applied to the replacement, rebuilding, restoration or repair of the Smith House to the fullest extent possible having regard to the cultural heritage value of the building referred to in the Conservation Plan and the Heritage Impact Assessment, the particular nature of the Smith House and the cost of such work.

Damage or Destruction

- 2.17 The Owner shall notify the Town of any damage or destruction to the Smith House within five (5) days of such damage or destruction being discovered.
- 2.18 In the event of damage or destruction of the Smith House, the Owner shall, subject to prior approval from the Town, replace, rebuild, restore or repair the Smith House in accordance with Heritage Impact Assessment, and in accordance with the Conservation Plan, and in accordance with Schedule "B", in the Final Location to which it is to be relocated. The Owner shall submit all plans and specifications for such replacement, rebuilding, restoration or repair to the Town for its written approval within ninety (90) days of the discovery of damage or destruction. Any approval will be made with reference to the Heritage Impact Assessment, the Conservation Plan, and the photographs referred to in section 1.4. The determination of the Manager of Policy and Heritage Planning shall be final. If the Town fails to respond to a submission of plans and specifications within ninety (90) days of the receipt, approval shall be deemed to have been given.
- 2.19 The Owner agrees it shall carry out the work described in section 2.18 on the Smith House but shall not cause such work to be commenced before receiving the written approval of the Town of the plans and specifications for it. Any such work shall conform to the plans and specifications approved by the Town and any terms and conditions as the Town may stipulate. All work on the Smith House shall be commenced within thirty (30) days of the Town's approval and shall be completed within twelve (12) months of commencement of that work, or as soon as possible thereafter if factors beyond the Owner's control prevent completion within the twelve (12) months.
- 2.20 If the Owner fails to submit plans and specifications pursuant to section 2.18 which are acceptable to the Town, the Town may prepare its own set of plans and specifications. The

Owner shall have sixty (60) days from receiving a copy of such plans and specifications to notify the Town in writing that it intends to carry out the work in accordance with those plans and specifications, failing which the Town may enter on the property, on thirty (30) days' notice to the Owner, and proceed with the work. The cost of such work shall be up to the value of any insurance proceeds receivable by the Owner under any insurance policies and any additional amount that the Town is prepared to contribute to the cost of such work. Upon demand, the Owner shall reimburse the Town for expenses incurred by the Town. In the event that the insurance proceeds are insufficient to cover the reasonable costs of the work, any deficiency shall become a debt due to the Town and may be collected from the Owner in any manner permitted by law, including adding the cost as an additional charge by the Town on the Property Taxes for the lands described in Schedule "A" and collected in a similar manner as municipal taxes.

- 2.21 In the event that the above-mentioned damage or destruction results in a total loss of the Smith House, the Town may waive the requirement to restore the Smith House as required in section 2.5, subject to any conditions that may be required. In order to determine whether damage has resulted in a total loss:
- a) A heritage impact assessment must be completed, at the cost of the Owner, by the Heritage Expert; and
 - b) The heritage impact assessment must be provided to the Town along with a request that the requirement to restore be waived.

Maintenance and Security of the Smith House

- 2.22 The Owner shall be responsible for ensuring that the Smith House is always maintained and secured in compliance with the *Fire Protection and Prevention Act, 1997, S.O. 1997, c. 4*, as amended or succeeded, and the Fire Code thereunder, as well as Town by-laws having the intent of ensuring the property is not a fire hazard, is secured from unauthorized entry and is maintained in a good state of repair.
- 2.23 The Owner shall install a fence, satisfactory to the Manager of Policy and Heritage Planning, to limit unauthorized access to the Smith House while in the Original Location and in the Final Location until such time as the Smith House is to be restored.
- 2.24 The Owner shall erect a sign, satisfactory to the Manager of Policy and Heritage Planning that the building is in the process of being restored for future use.

Emergencies

- 2.25 Notwithstanding section 2.1, the Owner may undertake temporary measures in respect of the Smith House so long as they are:
- a) In keeping with the intent of this HEA;
 - b) In keeping with the Heritage Impact Assessment and the Conservation Plan;
 - c) Reasonably necessary to deal with an emergency which puts the security or

integrity of the Smith House at risk of damage;

- d) In compliance with the *Building Code Act, 1992*, S.O. 1992, c. 23, as amended or succeeded; and
- e) Undertaken in consultation with the Town's Heritage Planning Staff where time permits.

- 2.26 If time does not permit the Owner to consult with Town's Heritage Planning Staff before undertaking any temporary measures, the Owner shall notify the Town of any measures taken within ten (10) days and must make arrangements with and satisfactory to the Town for a permanent solution, where one is required by the Manager of Policy and Heritage Planning.

Notice to Town

- 2.27 The Owner shall immediately notify the Town in the event that the Owner divests itself of the fee simple title to or of their possessory interest in the Original Location or the Final Location.

3.0 WAIVER

- 3.1. The failure of the Town at any time to require performance by the Owner of any obligation under this HEA shall in no way affect its right thereafter to enforce such obligation, nor shall the waiver by the Town of the performance of any obligation be taken or be held to be a waiver of the performance of the same or any other obligation at any later time.

4.0 EXTENSION OF TIME

- 4.1 Time shall be of the essence of this HEA. Any time limits specified in this HEA may be extended with the consent in writing of both the Owner and the Town, but no such extension of time shall operate as an extension of any other time limit, for which time shall remain of the essence.

5.0 INSPECTION OF THE SMITH HOUSE

- 5.1 The Town or its representatives shall be permitted at all reasonable times to enter upon the Original Location and the Final Location and inspect the Smith House upon prior written notice to the Owner of at least twenty-four (24) hours, or as otherwise permitted pursuant to the *Ontario Heritage Act*.

6.0 SEVERABILITY

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

7.0 NOTICE

- 7.1. Any notices to be given under this HEA shall be in writing and be delivered by personal delivery, prepaid registered mail or by email to the other party as follows:

THE OWNER
Zancor Oakville Ltd.
137 Bowes Road
Concord, Ontario L4K 1H3
Telephone: 905-738-7010
Email: stephanie@zancorhomes.com

THE TOWN
Town of Oakville
Attn: Town Clerk
1225 Trafalgar Road
Oakville, Ontario L6H 0H3
Telephone: 905-845-6601
Email: townclerk@oakville.ca

- 7.2. Notice shall be deemed to have been received on the date of personal delivery or email if such date is a business day and delivery is made prior to 4:00pm and otherwise on the next business day.
- 7.3. The parties shall notify each other immediately, in writing, of any changes of address from those set out above.

8.0 ENTIRETY

- 8.1 This written HEA 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.

9.0 SUBSEQUENT INSTRUMENTS TO CONTAIN THESE PROVISIONS

- 9.1 Notice of these covenants shall be inserted by the Owner in any subsequent agreement affecting that portion of the lands on which the Smith House is located or relocated and by which the Owner divests itself of the fee simple title to, or of their possessory interest in that portion of the lands on which the Smith House is located or relocated.

10.0 INTERPRETATION

- 10.1 The headings in the body of this HEA form no part of the HEA but shall be deemed to be inserted for convenience of reference only.

- 10.2 This HEA shall be construed with all changes in number and gender as may be required by the context.
- 11.0 REGISTRATION
- 11.1 It is understood and agreed that this HEA shall be registered on title to the Original Location and the Final Location in priority to all other interests in the lands and shall not be removed until the Owner has completed all obligations as set out herein to the satisfaction of the Manager of Policy Planning and Heritage.
- 12.0 ENUREMENT
- 12.1 It is intended that the covenants, easements, and restrictions set out in this HEA shall run with the Original Location and Final Location and shall enure to the benefit of and be binding upon the Owner and upon the Town and their respective heirs, executors, administrators, successors and assigns, as the case may be.
- 13.0 POSTPONEMENTS
- 13.1 Prior to the registration of this HEA on title to the Original Location and the Final Location, the Owner shall provide any postponements the Town Solicitor considers necessary to ensure that this HEA shall have priority over any other interests in these lands when registered. This shall be provided at no cost to the Town.
- 13.2 Concurrent with any necessary postponements, the Owner shall provide to the Town a solicitor's title opinion confirming that when registered this HEA will have priority over any other interest in the Original Location and the Final Location, satisfactory to the Town Solicitor.

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

THE CORPORATION OF THE TOWN OF OAKVILLE

Rob Burton, Mayor

Vicki Tytaneck, Clerk

We have authority to bind the corporation

ZANCOR OAKVILLE LTD.

Name: _____

Position: _____

I have the authority to bind the corporation

Schedule "A" – Legal Description of the Original Location and the Final Location

Schedule "B" – Salvage and Storage Requirements