

1979.

THIS AGREEMENT made this 11th day of December,

BETWEEN:

THE ONTARIO HERITAGE FOUNDATION,
a body corporate continued by
The Ontario Heritage Act, 1974,
S.O. 1974, c.122

hereinafter called the "Foundation"

OF THE FIRST PART,

- and -

THE CORPORATION OF THE CITY
OF HAMILTON,

hereinafter called the "City"

OF THE SECOND PART.

WHEREAS the Foundation is the owner of certain lands and premises situate, lying and being in the City of Hamilton in the Regional Municipality of Hamilton-Wentworth, municipally known as 654 Garth Street, Hamilton, and which said lands and premises are more particularly described in Schedule A attached hereto;

AND WHEREAS in holding the said lands and premises, it is the intention of the Foundation to conserve, protect and preserve the lands and premises as part of the heritage of Ontario;

AND WHEREAS the Foundation is desirous of granting

possession of the said lands and premises to the City pursuant to the provisions of this Agreement in order that the City may administer and manage the said lands and premises on behalf of the Foundation.

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the mutual covenants and agreements herein contained and subject to the terms and conditions hereinafter set out the parties hereto agree as follows:

1. In and for the purposes of this Agreement,

(a) "Property" means the real property described in Schedule "A" and includes the dwelling house and the coach house together with any other buildings or structures which may hereafter become situate upon the subject lands;

(b) "Buildings" means the structures of historical and architectural significance being a dwelling house and a coach house which are situated upon the subject lands as of the date of the execution of this Agreement and commonly known as "Chedoke".

2. The Foundation agrees to grant, and by the execution hereof does hereby grant unto the City the right to possession and control of the Property for a period of 30 years and from the date of this Agreement, but reserving in all events, all other incidents and rights of title in and to the Property and the Buildings to the Foundation, for the purposes of the development, maintenance, preservation, administration and supervision of the Property, and the Foundation hereby agrees with the City that, provided the City has complied with the terms of this Agreement, it will grant to the City the right to possession and control of the Property for a further period of 30 years from the expiry of the term hereby granted.

3. The City hereby agrees with the Foundation to develop, maintain, preserve, administer and supervise the property in the same manner, to the same standard and for the same general purposes as the City does with respect to similar types of historical, residential, recreational and park lands which are administered by or owned by and vested in the City.

4. The City agrees with the Foundation that all costs and expenses of any nature whatsoever incurred in connection with the development, maintenance, preservation, administration and supervision of the Property under this Agreement shall be borne by the City.

5. Subject to the written approval of the Foundation, which shall not be unreasonably withheld, the City may construct such new buildings or structures upon the Property as the City may require to carry out its obligations as set out in paragraph numbered 3 above. Any new buildings or structures which are constructed by the City under this Agreement shall become the property of the Foundation and ownership therein shall vest in the Foundation upon the termination of this Agreement or any renewal hereof. Subject to the written approval of the Foundation, which shall not be unreasonably withheld, the City may alter, renovate, repair and redecorate or make additions to any new buildings or structures which are constructed on the Property by the City.

6. Because of the historical, architectural and aesthetic character of the Buildings, the City shall not undertake or permit any construction, alteration, re-modelling, or any other thing or act which would materially affect the appearance or construction of the exterior of the Buildings without first receiving the express written permission of the Foundation. 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. If the approval of the Foundation is given or deemed to be given under this paragraph, the City, 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 City shall be permitted, without prior written approval of the Foundation, to undertake or permit the repair or refinishing of presently existing parts or elements of the Buildings, damage to which has resulted from casualty, loss, deterioration, or wear and tear, provided that such repair or refinishing may not be performed in a manner which would materially affect the appearance or construction of the exterior of the Buildings.

7. Because of the historical, architectural and aesthetic

character of the Buildings, the City shall not undertake or permit the demolition of the Buildings without first receiving the express written permission of the Foundation.

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

- (a) grant any easement or right of way;
- (b) allow the dumping of soil, rubbish, ashes, garbage, waste or other unsightly, hazardous or offensive materials of any type or description;
- (c) 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, sand or other materials;
- (d) 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;
- (e) Allow the planting of trees, shrubs or other vegetation which would have the effect of (i) reducing the aesthetics of the Buildings or the Property, or (ii) causing any damage to the Buildings;
- (f) allow any activities, actions or uses detrimental or adverse to water conservation, erosion control and soil conservation.

9. (a) The City shall at all times during the currency of this Agreement keep the Buildings insured against normal perils that are coverable by fire and extended coverage insurance in an amount that a prudent owner would normally purchase on

such structures, and shall cause to be inserted in all insurance policies on the Buildings a condition that the insurance company shall notify the Foundation of any cessation in insurance coverage or change in risk that might affect the liability of the insurance company under the policy or policies. If the City fails to so insure the Buildings, or if any such insurance on the Buildings is cancelled, or if the liability of the insurance company is affected by a change in risk, 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 City to the Foundation on demand, or if not so paid shall be a debt owing to the Foundation.

(b) In the event of damage or destruction to the whole or any part of the Buildings, the City shall use the proceeds of the said insurance to replace, rebuild, restore or repair the whole or that part of the Buildings so damaged or destroyed to the limit of any proceeds receivable under the said insurance, unless it shall have been agreed between the Foundation and the City that replacement, rebuilding, restoration or repair thereof is impractical, unwarranted or unnecessary, in which case the proceeds of the said insurance shall be distributed between the City and the Foundation as follows:

- (i) The City shall be entitled to that portion of the proceeds of the said insurance that is equal to the amount which the City has expended on behalf of capital and maintenance costs to the Buildings and which the City has not recovered from any tenant of the Property;
- (ii) The Foundation shall be entitled to the remainder of the proceeds of the said insurance after the City has taken its portion pursuant to the provisions of clause (i) above.

(c) Similarly, in the event of damage or destruction to the whole or any part of any other buildings or structures upon the subject lands, the City shall use the proceeds of the said insurance to repair or replace the whole or that part of such building

or structure so damaged or destroyed to the limit of any proceeds receivable under the said insurance, unless it shall have been agreed between the Foundation and the City that repair or replacement thereof is impractical, unwarranted or unnecessary to carry out the intent and objects set out in paragraph numbered 3 of this Agreement, in which case the proceeds of the said insurance shall be retained by the City.

10.
 - (a) The City shall maintain comprehensive general liability insurance acceptable to the Foundation and subject to limits of not less than \$1,000,000.00 inclusive per occurrence for bodily injury (including personal injury), death, and damage to property including loss of use thereof and products.
 - (b) The policies of liability insurance shall include as an additional insured the Foundation, but only in respect of and the carrying out of the responsibilities assumed by the City under this Agreement and not in respect of any act or omission of the Foundation or any of its officers, directors, employees or agents. In addition, the policy of liability insurance shall contain a cross liability clause endorsement.
 - (c) The City shall arrange for the completion and submission of a certificate of liability insurance which shall include a provision requiring the insurer to give prior notice to the Foundation in the manner set forth in the policy conditions in the event that the policy of liability insurance is changed or cancelled.

11. The City will at all times indemnify and save harmless the Foundation, its officers, employees and agents from and against all claims, demands, losses, costs, damages, actions, suits or other proceedings by whomsoever made, sustained, brought or prosecuted in any manner based upon, occasioned by, or attributable to anything done or omitted to be done by the City, its officers, employees, servants or agents in connection with the Property or in the fulfilment or purported fulfilment or required fulfilment of any of the provisions of this

Agreement.

12. Notwithstanding any provision of this Agreement, nothing herein shall be interpreted or construed as giving rise to a claim by the City that it has acquired title by possession or prescription to the Property either during the term of this Agreement or upon the expiration of same.

13. The City agrees to submit to the Foundation, for its written approval, any document by which the City intends to divest itself of possession of the whole or any part of the Property, prior to its execution.

14. In the event of any disagreement between the Foundation and the City at any time concerning the rights or obligations of either of them hereunder, or of the reasonableness of the approval to perform some act sought to be performed hereunder or refused respectively, or concerning the requirement to replace, rebuild, restore or repair the whole or any part of the Buildings, or other building or structure which may have been damaged or destroyed, the parties hereto agree that either or both of them may apply to the Lieutenant Governor in Council to have the matter in dispute arbitrated pursuant to The Arbitrations Act, R.S.O. 1970, C.25, as amended, and that upon such application, the Lieutenant Governor in Council shall appoint a single arbitrator who shall investigate the dispute and whose decision in respect thereof shall be final and binding upon both parties hereto and this obligation to submit to arbitration is to be construed as an integral part of this Agreement.

15. If at any time during the continuance of this Agreement, the parties hereto shall deem it necessary or expedient to make any alteration or addition to this Agreement, they may do so by means of a written agreement between them which shall be supplemental hereto and form part hereof.

16. It is agreed that this written instrument embodies the entire agreement of the parties hereto with regard to the matters dealt with herein, and that no understandings or agreements, collateral, verbal or otherwise, exist between the parties except as herein expressly set out.

17. This Agreement shall enure to the benefit of and be binding

c/s

K. L. M.

DEPUTY City Clerk

APPROVED
AS TO FORM
CITY SOLICITOR

SCHEDULE "A"

ALL AND SINGULAR that certain parcel or tract of land and premises, situatelying and being in the City of Hamilton in the Regional Municipality of Hamilton-Wentworth (formerly in the Township of Barton in the County of Wentworth) and being composed of Lot One according to W.D. Flatt's plan of Chedoke Park Survey registered in the Registry Office for the County of Wentworth on the 29th day of December 1909 as number 447. SAVE AND EXCEPTING that part of said lot more particularly described as follows:

COMMENCING at a point in the western limit of Mount Pleasant Avenue distant four hundred and forty-five feet and six inches (445' 6") measured northerly from the northern limit of the road allowance between Concessions four and five. THENCE north eighteen degrees east along the said western limit of Mount Pleasant Avenue three hundred and fifty-three feet and eight inches (353' 8") more or less to the brow of the mountain. THENCE southwesterly and following the brow of the mountain one hundred and eighty-five feet and eight inches (185' 8") to a stake planted. THENCE south eighteen degrees west parallel to and distant one hundred and fifty feet (150') measured at right angles from the aforesaid western limit of Mount Pleasant Avenue two hundred and ninety-five feet and six inches (295' 6") to a stake planted. THENCE on a curve to the left and following the northern limit of an old roadway one hundred and fifty-nine feet and three inches (159' 3") to the place of beginning.

TOGETHER WITH those parts of Mount Pleasant Avenue and Edgecliffe Crescent as shown on said plan 447, to which the grantor became entitled by virtue of Orders made by the Judge of the County Court of the County of Wentworth closing such Avenue and Crescent, and which Orders were duly registered as Number 14693 and Number 15151 for the Township of Barton.

AND TOGETHER WITH AND SUBJECT TO a right-of-way twenty-four feet (24') in width leading from Garth Street to the hereinbefore described lands as set forth and provided for in an agreement dated the 20th day of October 1921 between Alan V. Young, Edna Greening Young, Herold Benjamin Greening and Ethel M. Balfour

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which was duly registered in the Registry Office for the Registry Division of the County of Wentworth on the 21st day of October 1921 as Number 25232, and more particularly described as follows:

Said right of way being situate lying and being in the City of Hamilton, in the Regional Municipality of Hamilton-Wentworth and Province of Ontario, formerly in the Township of Barton, County of Wentworth, being composed of part of Lot Number Nineteen in the Fourth Concession of the said City of Hamilton, now laid out according to the plan of Chedoke Park Survey and registered in the Registry Office for the Registry Division of Wentworth as Plan Number 447, said right of way being composed of part of Lots Nos. 1, 8, 9, 24, 25, 37 and 54 and parts of Mount Pleasant Avenue, Edgecliffe Crescent and Westminster Avenue, as shown on the said plan of Chedoke Park Survey registered Plan No. 447, the centre line of said right of way may be more particularly described as follows, that is to say:

COMMENCING at a point in the western limit of Garth Street, distant Twenty-Seven feet and four inches measured on a course North eighteen degrees East along the western limit of Garth Street from the southeast angle of Lot No. 54 according to the plan of Chedoke Park Survey said point being also distant Four hundred and twenty-seven feet and four inches measured on a course north eighteen degrees East along the western limit of Garth Street from a stone monument marking the intersection of the western limit of Garth Street with the northern limit of the road allowance between Concessions Four and Five in the said City of Hamilton. Thence North sixty-nine degrees and twenty-nine minutes West Two hundred and fifty feet and three and three-quarter inches more or less to a point in the western limit of Westminster Avenue, according to said registered Plan No. 447 distant four hundred and thirty-nine feet and ten inches measured northerly along the western limit of Westminster Avenue from the northern limit of the road allowance between Concessions Four and Five. Thence north seventy-one degrees and sixteen minutes west Two hundred and sixteen feet and six inches to a point said point being distant Four hundred and forty-three feet and ten inches measured northerly parallel with the western limit of Mount Pleasant Avenue from the northern limit of the road allowance between Concessions Four and Five. From the point of commencement to this last mentioned point, said right of way has a width of Twenty-four feet, eight feet measured at right angles on the north side and sixteen feet on the south side of aforesaid centre line. From this last mentioned

- 3 -

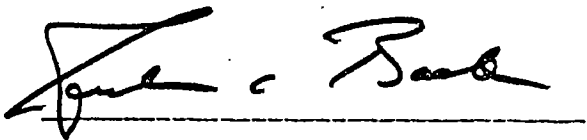
point said right of way having a width of Eight feet, Four feet measured at right angles on either side of the herein described centre line said centre line continuing as follows: Thence north eighty-six degrees and twenty minutes west One hundred and twenty-three feet and four inches to a point. Thence on a curve to the right having a radius of Fifty feet Seventy-eight feet and seven inches to a point. Thence north one degree and thirty minutes east Ten feet more or less to the division line between the properties of H.B. Greening and Ethel Balfour said division line being a line drawn westerly parallel with and distant One hundred and fifty feet measured at right angles from the western limit of Mount Pleasant Avenue as shown on the aforesaid registered Plan No. 447 and said point being distant Four hundred and sixty feet and three inches measured northerly parallel with the western limit of Mount Pleasant Avenue from the northern limit of the road allowance between Concessions Four and Five.

PROVINCE OF ONTARIO)	IN THE MATTER OF
)	The Ontario Heritage
REGIONAL MUNICIPALITY)	Act, 1974, S.O. 1974,
)	c. 122, as amended
OF HAMILTON-)	
)	
WENTWORTH)	
)	
)	

A P P R O V A L

Pursuant to section 10 (1) (e) of The Ontario Heritage Act, 1974, S. O. 1974, c.122, I, the undersigned Minister of Culture and Recreation for the Province of Ontario, do hereby approve the execution by The Ontario Heritage Foundation of the attached Agreement between The Ontario Heritage Foundation, of the first part, and The Corporation of the City of Hamilton, of the second part, dated the day of December, 1979, and do hereby certify that the said Agreement is in accordance with the policies and priorities determined by me for the conservation, protection and preservation of the heritage of Ontario.

DATED at Toronto the 11th day of December, 1979.



Minister of Culture and
Recreation for the Province
of Ontario.

10/10/2019 10:10:10 AM

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40.13.4

CORPORATION OF THE CITY OF HAMILTON

LAW DEPARTMENT

M E M O R A N D U M

TO: Mr. J. J. Schatz
City Clerk
Attention: Mr. S. G. Hollowell
Manager, Records Division

FROM: Barbara Dawson
Legal Secretary

RE: Lease Renewal Between the City and
Wilson Elizabeth Balfour Baxter and
The Ontario Heritage Foundation
1 Balfour Drive

OUR FILE: 80-1.342

DATE: April 9, 1992

PHONE: 546-2129

Please be advised the above matter was authorized by City Council on March 26, 1991, in adopting Item 12 of the 6th Report of the Finance and Administration Committee.

For your custody, attached please find duplicate registered Lease Amendment dated the 27th day of March, 1992, registered in both the Land Titles and Registry Systems, as Instrument Nos. LT 320008 and 116368, respectively, on April 8, 1992.

bd
Enclosures

cc: Mr. I. Roy Hammel, Acting Treasurer
Treasury Department
Attention: Ms. Abbey Pirkas

Mr. D. W. Vyce, Director
Property Department
Attention: Mr. M.C.J. Watson

Barbara Dawson
Barbara Dawson
Legal Secretary

Property Department
Real Estate Division

Date *Apr. 10/92*

File No.	Inf.	Act
Director		
<input checked="" type="checkbox"/> Manager		
Chief Appraiser		
Architect Div.		
Prop. Maint. Div.		
<i>Bob 14</i>		
Secretary		<input checked="" type="checkbox"/>

File

LAND TITLES
L.T. 320008

REGISTRY # 116368

BOTH
REGISTERED ON
APRIL 8TH, 1992

New Property Identifiers

Additional:
See
Schedule ☐

Executions

Additional:
See
Schedule ☐

(1) Registry ☒

Land Titles ☒

(2) Page 1 of 4 pages

(3) Property Identifier(s)

Block

Property

Additional:
See
Schedule ☐

(4) Nature of Document

LEASE AMENDMENT

(5) Consideration NIL

-----XX/100

Dollars \$

(6) Description

FIRSTLY: REGISTRY - Part Lot 1, Plan 447,
designated as Part 1, Plan 62R-11877

SECONDLY: LAND TITLES - Parcel Block 24-7,
Section M-316, Part Block 24, Plan M-316,
designated as Part 2, Plan 62R-11877

All in the City of Hamilton, Regional
Municipality of Hamilton-Wentworth

(7) This Document Contains:

(a) Redescription
New Easement
Plan/Sketch ☐

(b) Schedule for:

Description ☐

Additional
Parties ☐

Other ☒

(8) This Document provides as follows:

SEE LEASE AMENDMENT ATTACHED

Continued on Schedule ☐

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

146062 C.D.

(10) Party(ies) (Set out Status or Interest)
Name(s)

Signature(s)

Date of Signature
Y M D

THE CORPORATION OF THE CITY OF HAMILTON

by its Solicitor, Elizabeth Isajiw

Elizabeth Isajiw

1992 03 06

(11) Address
for Service

P.O. Box 2040, 71 Main Street West, Hamilton, Ontario L8N 3T4

(12) Party(ies) (Set out Status or Interest)
Name(s)

Signature(s)

Date of Signature
Y M D

THE ONTARIO HERITAGE FOUNDATION

BAXTER, Wilson Elizabeth Balfour

(13) Address
for Service

c/o Lazier, Hickey, Langs, O'Neal, 25 Main St. W., Hamilton, Ont L8P 1H

(14) Municipal Address of Property

1 Balfour Drive
Hamilton, Ontario
L9C 7A5

(15) Document Prepared by:

City of Hamilton
Law Department
P.O. Box 2040, 71 Main St. W.
Hamilton, Ontario
L8N 3T4
File No. 80-1.342

Fees and Tax

Registration Fee

Total

THIS INDENTURE made as of the 27th day of March, 1991.

In pursuance of the Short Forms of Leases Act.

B E T W E E N:

THE CORPORATION OF THE CITY OF HAMILTON

(hereinafter called the "Lessor")

OF THE FIRST PART

- and -

WILSON ELIZABETH BALFOUR BAXTER, of the City of
Hamilton, in the Regional Municipality of
Hamilton-Wentworth, Widow

(hereinafter called the "Lessee")

OF THE SECOND PART

- and -

THE ONTARIO HERITAGE FOUNDATION, a body corporate
continued by The Ontario Heritage Act, 1974, S.O.
1974, c. 122,

(hereinafter called the "Foundation")

OF THE THIRD PART.

WHEREAS the said parties of the first, second and third parts entered into a Lease dated September 1, 1979 and registered in the Land Registry Division of Wentworth (No.62) on December 12, 1979 as 146062 C.D. covering the lands described in Schedule "A" (hereinafter called the "Premises") for a period of 30 years with a provision for a further period of 30 years thereafter,

AND WHEREAS clause 3(e) of the said Lease provides that at the end of each five (5) year period of the Lease, the Lessor and the Lessee shall review the rent payable for the ensuing five (5) year period, and the rent shall be adjusted if requisite, to reflect a fair and reasonable rent having in mind the special nature of the premises and the particular arrangements which have been heretofore negotiated by the parties in respect of the premises,

AND WHEREAS an Agreement amending the said Lease as provided under clause 3(e) thereof regarding the second five (5) year period which ended October 31, 1989, was registered as No. 329661 C.D. on October 8, 1985,

AND WHEREAS the Lessor and the Lessee have reviewed the rent payable for the third five (5) year period, therefore the parties now agree as follows:

1. The sum of One Thousand, Two Hundred and Fifty Dollars (\$1,250.00) is to be payable monthly on the 1st day of November and December, 1989 and on the 1st day of January, 1990;

2. Subject to Section 3(e) of the Lease, the sum of One Thousand, Seven Hundred and Fifty Dollars (\$1,750.00) is to be payable monthly on the 1st day of each and every month during the remainder of this third five (5) year term of the Lease, the first of such payments to become due and be paid on the 1st day of February, 1990;
3. The parties acknowledge that subsequent to the original Lease herein, a new survey was prepared and deposited as Plan 62R-11877 and the parties hereby agree that the description in Schedule "A" of the said Lease is hereby deleted and the attached new description set out in Schedule "A" herein is substituted therefor.
4. All the other terms of the original lease dated September 1, 1979 are hereby confirmed in full force save and except as amended by paragraphs one, two and three herein.

IN WITNESS WHEREOF the Lessor has hereunto affixed its corporate seal attested by the hands of its duly authorized officers in that behalf, the Lessee has hereunto set her hand and seal and the Foundation has hereunto affixed its corporate seal attested by the hands of its duly authorized officers in that behalf as of the date and year first above written.


SIGNED, SEALED AND DELIVERED
in the presence of



Barbara Connor

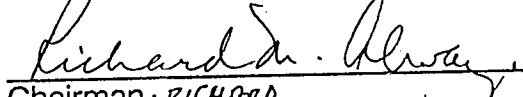
THE CORPORATION OF THE CITY OF
HAMILTON

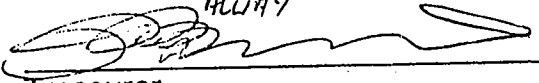

ROBERT M. MORROW - Mayor


K. E. AVERY - City Clerk
J. J. SCHATZ


WILSON ELIZABETH BALFOUR BAXTER

THE ONTARIO HERITAGE FOUNDATION


Chairman: RICHARD
ALWAY


Treasurer

CHIEF OPERATING OFFICER
BARRY GARDINER

Legal Description: 1 Balfour Drive, Hamilton ("Chedoke")

City of Hamilton,
Regional Municipality of Hamilton-Wentworth

FIRSTLY: Registry

Part Lot 1, Plan 447,
designated as Part 1, Plan 62R-11877

SECONDLY: Land Titles

Parcel Block 24-7, Section M-316
Part Block 24, Plan M-316,
designated as Part 2, Plan 62R-11877