



Report to: Development Services Committee

Report Date: March 27, 2012

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**SUBJECT:** Revisions to Approved Plans due to Unauthorized Demolition  
of Heritage Dwelling  
Building Permit Application HP 11 122569 000 01  
41 Albert Street, Markham Village

**PREPARED BY:** Peter Wokral, Heritage Planner, ext., 7955

**REVIEWED BY:** Regan Hutcheson, Manager, Heritage Planning, ext 2080

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**RECOMMENDATION:**

- 1) That the report entitled “Revisions to Approved Plans due to Unauthorized Demolition of Heritage Dwelling, Building Permit Application HP 11 122569 000 01, 41 Albert Street, Markham Village”, dated March 27, 2012, be received;
- 2) That Council does not support the Building Permit application seeking approval for the unauthorized alteration of the single detached dwelling at 41 Albert St. Markham Village;
- 3) And that Council would support a revised building permit application from the applicant, that replicates the original dimensions and form of the former heritage dwelling at 41 Albert St. which includes the retention of any of the historic materials that have not yet been disposed of;
- 4) And that Staff be authorized and directed to do all things necessary to give effect to this resolution

**PURPOSE:**

The purpose of the this report is consider a building permit application seeking approval for unauthorized alterations which led to the demolition of a single detached dwelling located at 41 Albert St. in Markham Village. The applicant has re-built the structure in a similar design and is seeking approval.

**BACKGROUND:**

**The house at 41 Albert St. was purchased by the neighbouring property owners**

The house at 41 Albert St. was recently purchased by Brett and Alexis Whalen who reside at 43 Albert St., the adjacent property to the north. They purchased the house and property at 41 Albert St. to increase the size of their backyard amenity space and to provide room for a new swimming pool.

**The house at 41 Albert St. is a significant heritage resource**

The house located at 41 Albert St. is a heritage resource. The building/property is:

- designated under Part V of the Ontario Heritage Act;
- identified as a Class ‘A’ building in the Markham Village Heritage Conservation District Plan which means it is a building that helps to define the heritage character of the district;

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- protected through a Heritage Conservation Easement Agreement with the Town;
  - a past site for Doors Open Markham; and
  - a past award winner (Heritage Markham Award of Excellence, 2007)

Ongoing research suggests that this house was originally constructed at this location c. 1860 for William Leaper who was an employee of the Speight Wagon company, who immigrated to Canada from England in 1858.

### **Heritage Easement Agreement**

A Heritage Easement Agreement was registered on the property on July 20, 2004 by the previous owners. The Agreement sets out the reasons why the building has been identified as having historic and architectural significance and identifies the significant attributes to be conserved including:

- Wood board and batten siding
- Wood, double hung windows
- Centre doorway
- Wood front door
- Overall form of the house
- Original window and door openings, trim and sills
- Roof profile
- Wood soffits and fascia, returned eaves
- Wood front porch.

The Agreement indicates that the Owner shall not, **without the prior written approval of the Town**, 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 Building as set out in the 'Reasons for Identification'. There are also provisions to deal with destruction, reconstruction and if the owner fails to reconstruct the dwelling. (see Appendix 'E')

### **Previous owners saved the house from demolition**

The house was partially restored and renovated by the previous owners prior to being sold to the applicant. Because the house had been neglected for many years, the previous owners had to replace structural elements that included several studs of the front wall, and large portions of the sill. It has been reported that the repairs made by the previous owners to the sill and floor structure were of a temporary nature, as the existing foundation was inadequate. The previous owners have indicated that they had planned to fully address these structural deficiencies when and if they decided to construct a new foundation.

On the exterior, the previous owners replaced areas of the wooden board and batten siding, switched the front door with the rear door, and installed new wooden windows that were appropriate to the age of the structure. Despite the alterations made by the previous owners, the house retained its original form, dimensions, and much of its original structure. (See attached photographs Appendix 'A')

**The current owners planned to convert the house into a pool house/cabana**

As part of their plans to expand their backyard amenity area, the current owners planned to slightly re-position the location of the existing dwelling at 41 Albert St., onto a new foundation and convert it into a pool house/cabana.

**The applicants entered into agreements with the Town to preserve the house**

The applicants hired a building mover to relocate the building and they then entered into two separate agreements with the Town to obtain approval for their plans. The first agreement was a Letter of Undertaking to temporarily re-locate the house to enable the construction of a new foundation, and this was secured with a \$10,000 Letter of Credit to ensure that the existing house was successfully relocated as a complete structure onto the new foundation.

The second agreement executed with the Town was a Site Plan Agreement approving the new position and foundation for the existing house, and the construction of two small additions to the sides of the existing house and a pergola to the rear. This Agreement also contained restoration conditions requiring retention of existing exterior features such as the front windows, front door, board and batten siding, and the porch roof, and was secured by the same \$10,000 Letter of Credit. (See approved Site Plan drawings Appendix 'B')

**Alterations resulted in the demolition of the dwelling**

According to the applicants, the house was successfully moved and relocated to a new foundation as per the conditions of the Letter of Understanding. However, Heritage Staff became aware of unauthorized alterations to the dwelling following a routine inspection by the one of the Town's building inspectors who discovered a number of deviations from the approved building permit and site plan drawings. These deviations included removing the existing walls and roof and building an entirely new structural system, new higher exterior walls to provide an increased ceiling height, and a new slightly steeper and higher roof. (See photos of altered building Appendix 'C').

**The Town has initiated charges under the Ontario Heritage Act**

As a result of the unauthorized alterations to the house at 41 Albert St. that resulted in the demolition of the house, Staff has initiated charges under the Ontario Heritage Act, as the owners were obliged to obtain permission from the municipality for any alteration to the exterior of a designated property.

**A Direction to Comply was issued by the Town's Building Department**

The owners of 41 Albert St. were issued a Direction to Comply, by the Town's Building Department requiring the owners to either comply with the previously approved building permit drawings, or to submit new building permit drawings seeking approval for the unauthorized alterations. The owners have decided to seek approval for the unauthorized alterations by submitting the revised building permit that is the subject of this report.

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**The revised Application is not supported by Heritage Section Staff and Heritage Markham**

Heritage Staff does not support the revised building permit application because it seeks permission for the construction of a new dwelling that is contrary to the conditions contained in both the Letter of Undertaking and Site Plan Agreement. The work undertaken has resulted in the complete demolition of the former structure.

The revised building permit application also seeks approval for the replacement of the last remaining features of the former house including the historic front door, and remaining portions of the historic siding. These features originally were retained on the newly built structure, but have now been removed.

Heritage Markham reviewed the revised building permit application in February of 2012 and did not support the application reflecting the unauthorized alterations. However, given that the original structural members of the house and the remaining historic siding has already been disposed of, Heritage Staff and Heritage Markham indicated they could support a revised building permit application that reflects the original form and dimensions of the previous house, and includes provisions for the retention of the remaining architectural elements of the previous house including the historic door and the remaining reproduction windows. (See attached Heritage Markham Extract from February 2012 - Appendix 'D')

**OPTIONS/ DISCUSSION:****The heritage resource has been lost**

The actions of the applicant have resulted in the demolition of the heritage resource which was on the property. The applicant had successfully relocated the former house onto its new foundation, but subsequently, and without further consultation with Town officials, disassembled/removed the existing walls and roof/porch structures. These elements were then re-built using new materials, but generally not in conformity with the original dimensions of the former building. When staff attended the site, the only original component was the front wall and this has now been removed.

**Council has options**

Council has two main options to address this issue:

- 1) Council can approve the revised building permit that reflects the unauthorized alterations made to the house by the applicants which also includes replacement of the historic material identified for retention in the Site Plan agreement and protected by the Heritage Conservation Easement, or
- 2) Council can approve the recommendation of Heritage Section Staff and Heritage Markham, which is to deny the revised application, but support a new application that replicates the original form and dimensions of the original house which previously existed at 41 Albert St. and provides for the retention of any of the historic materials which have not already been disposed of.

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This option reflects what Council is permitted to require of the owner as per the Heritage Easement Agreement. According to the Agreement, the Town can require the owner to “replace, rebuild, restore or repair the Building so as to effect the complete restoration of the Building”. The restorative work is to be performed upon such terms and conditions as the Town may stipulate. (See Appendix E for details of the Easement Agreement – Reconstruction by Owner).

Staff recommends Option 2.

**An appeal of Council’s decision would be referred to the Ontario Municipal Board**  
The building permit is considered to be a Heritage Permit application under the Ontario Heritage Act. If the applicant chooses to appeal the decision of Council regarding the subject application, the matter will be referred to the Ontario Municipal Board for a hearing.

**The charges under the Ontario Heritage Act are unaffected by Council’s decision**  
The issue of the building permit application is a separate matter from the prosecution of this offence under the Ontario Heritage Act. The Town will continue to press charges against the applicant under the Act for the demolition of a designated property.

**FINANCIAL CONSIDERATIONS AND TEMPLATE: (external link)**

Not applicable

**HUMAN RESOURCES CONSIDERATIONS**

An appeal of Council’s recommendations by the applicant could lead to the Town’s participation in an Ontario Municipal Board hearing involving both Legal and Heritage Section Staff.

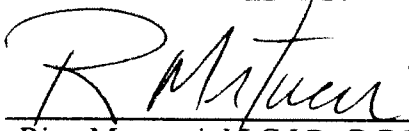
**ALIGNMENT WITH STRATEGIC PRIORITIES**

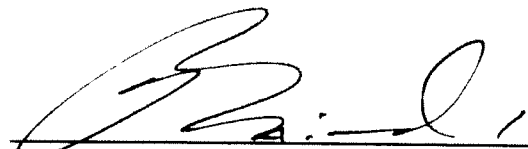
Not applicable

**BUSINESS UNITS CONSULTED AND AFFECTED:**

Heritage Markham Committee was consulted.

**RECOMMENDED BY:**

  
\_\_\_\_\_  
Rino Mostacci, M.C.I.P., R.P.P.  
Director, Planning & Urban Design

  
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Jim Baird, M.C.I.P., R.P.P.  
Commissioner of Development Services

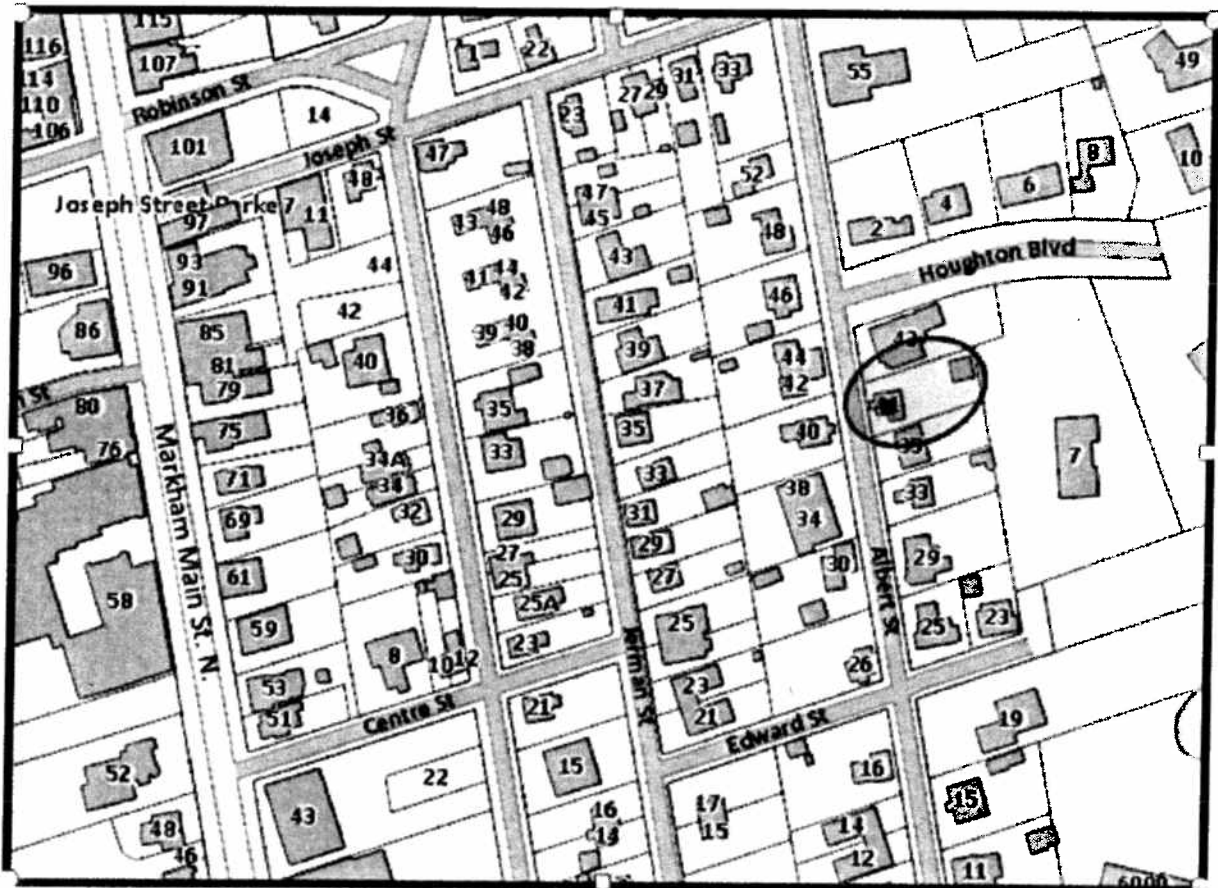
**ATTACHMENTS:**

Figure 1	Location Map
Appendix A	Photographs of 41 Albert St. prior to being altered
Appendix B	Approved Site Plan elevations for 41 Albert St.
Appendix C	Photographs of alterations/demolition of 41 Albert St.
Appendix D	Heritage Markham Extract from February 8, 2012
Appendix E	Heritage Easement Agreement- Reconstruction by Owner

**Applicant: Brett Whalen**  
**43 Albert St.**  
**Markham, ON L3P 2T4**

**LOCATION MAP:**

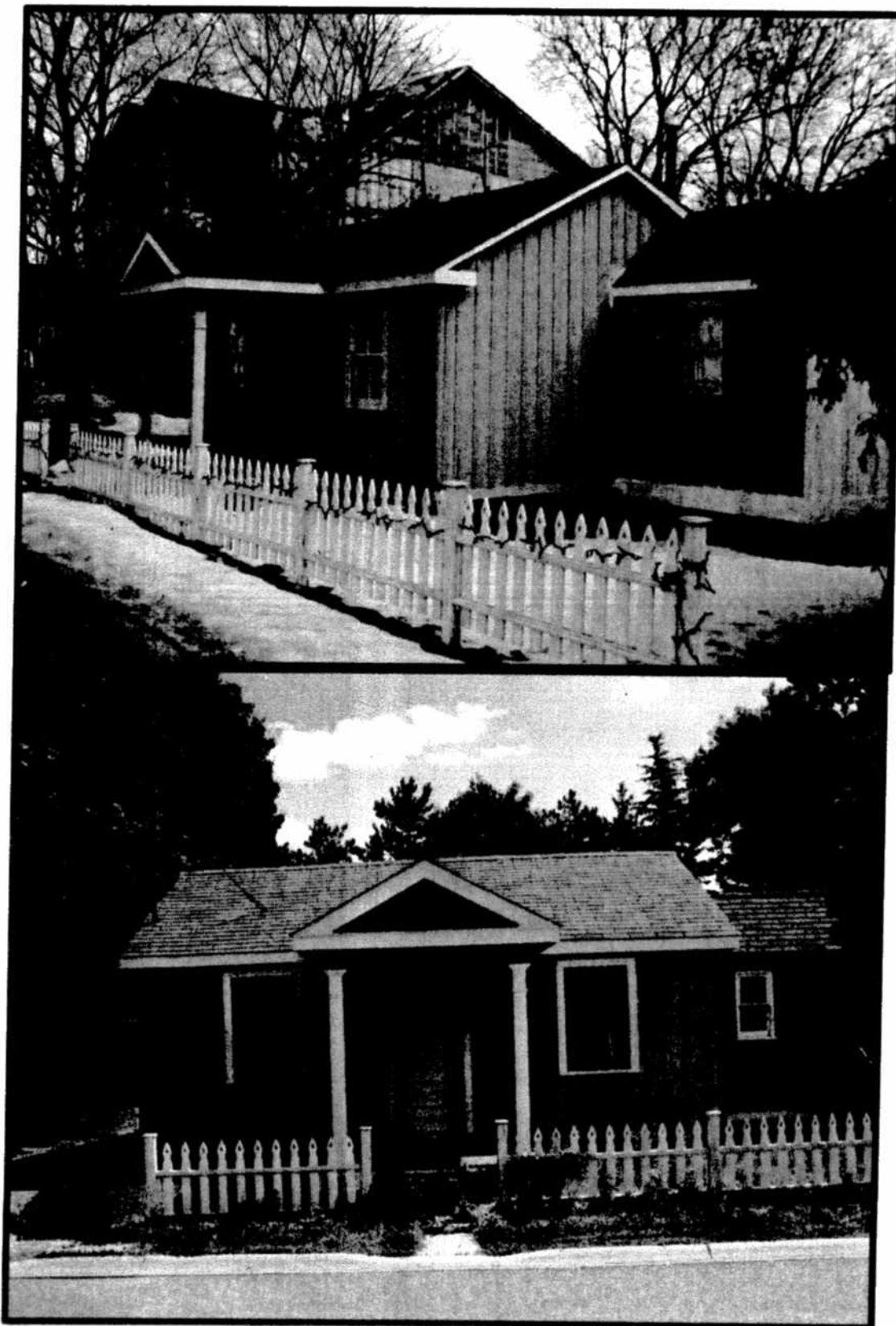
**FIGURE 1**



**File Path:Q:\Development\Heritage\PROPERTY\ALBERT\41\Report to DSC March 27 2012.doc**

## APPENDIX 'A'

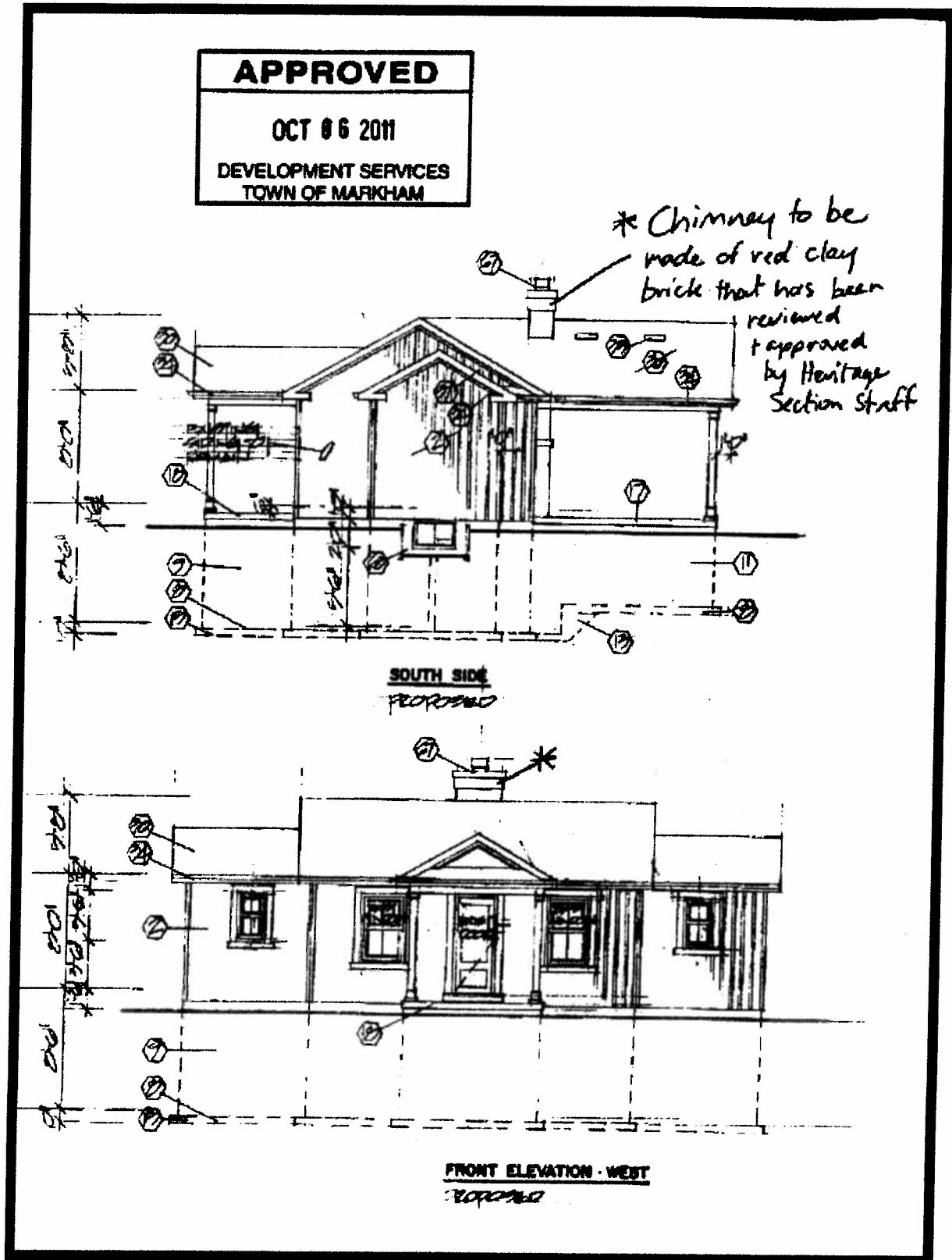
Photographs of house prior to unauthorized alteration/demolition





# APPENDIX 'B'

## Approved Site Plan Drawings



## APPENDIX 'C'

Photographs showing altered proportions and new structural system



Interior photographs showing new structural members.

## APPENDIX 'D'

### Heritage Markham Extract from February 8, 2012

Heritage Markham Minutes  
February 8, 2012  
Page 24

#### HERITAGE MARKHAM EXTRACT

DATE: February 13, 2012  
TO: R. Hutcheson, Manager of Heritage Planning  
P. Wokral, Heritage Planner

EXTRACT CONTAINING ITEM #23 OF THE SECOND HERITAGE MARKHAM  
COMMITTEE MEETING HELD ON FEBRUARY 8, 2012

23. BUILDING PERMIT APPLICATION  
FILE NUMBER: HP 11 122659  
41 ALBERT STREET  
REVISED BUILDING PERMIT APPLICATION (16.11)  
Extracts: R. Hutcheson, Manager of Heritage Planning  
P. Wokral, Heritage Planner

The Heritage Planner provided an update on the revised proposal for 41 Albert Street, beyond the scope of the original application approved by Heritage Markham. The existing heritage dwelling has been replaced by a building with a modified design.

#### HERITAGE MARKHAM RECOMMENDS:

THAT Heritage Markham does not support the revised Building Permit application for 41 Albert Street seeking approval for the unauthorized alteration/demolition of this structure; and,

THAT Heritage Markham supports the Town laying charges under the Ontario Heritage Act for the unauthorized alteration/demolition of the structure at 41 Albert St.; and,

THAT Heritage Markham supports the following approach:

- a) the building is to be re-built to the original plans as previously approved by the Town using the original material to replicate the former structure's appearance in terms of height, scale and massing;
- b) or if the original material has been disposed of, the building is to be re-built to the original plans as previously approved by the Town using new material to replicate the former structure's appearance in terms of height, scale and massing;

CARRIED

## APPENDIX E

THIS EASEMENT AGREEMENT made this 15th day of June, 2004.

B E T W E E N:

**MARK EDWARD CASELLA AND EDWARD ANTHONY CASELLA**  
(hereinafter called the "Owner")

OF THE FIRST PART

- and -

**THE CORPORATION OF THE TOWN OF MARKHAM**  
(hereinafter called the "Town")

OF THE SECOND PART

**WHEREAS** the Owner is the owner of certain lands and premises situated in the Town of Markham in the Regional Municipality of York and Province of Ontario, and municipally known as 41 Albert Street (hereinafter called the "Property"), and more particularly described in Schedule "A" attached hereto and which there is "The Albert Street Cottage" (hereinafter called the "Building");

**AND WHEREAS** one of the purposes of the *Ontario Heritage Act*, R.S.O. 1990, c. O.18, is to support, encourage and facilitate the conservation, protection and preservation of the heritage of Ontario;

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

**AND WHEREAS** by Subsection 37(3) of the *Ontario Heritage Act*, such covenants and easements entered into by the Town when registered in the proper Land Registry Office against the real property affected by them shall run with the real property and may, whether positive or negative in nature, be enforced by the 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 benefitted by such covenants and easements;

**AND WHEREAS** the Owner and the Town 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 Identification";

**AND WHEREAS** to this end, the Owner and the Town agree to enter into this Easement Agreement (hereinafter called the "Agreement");

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the sum of TWO DOLLARS (\$2.00) of lawful money of Canada now paid by the Town 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 Town agree to abide by the following covenants, easements and restrictions which shall run with the Property forever.

## **1.0 REASONS FOR IDENTIFICATION**

### **1.1 Statement of Reasons**

The Owner and the Town agree that for the purposes of this Agreement the following statement (hereinafter called the "Reasons for Identification") sets out the reasons why the Building has been identified by the Town as having historic and architectural significance:

#### Historical Reasons:

The building at 41 Albert Street is believed to have been built in the mid-late 19th Century at another location and relocated to the current site c.1930.

The house is a modest example of a small cottage for workers in local industries.

#### Architectural Reasons:

The house at 41 Albert Street is a good example of a frame workers cottage built with the influence of the Georgian style

The house has a 3 bay facade with a centre doorway.

The house is clad in vertical board and batten and retains its original, wood, double hung 2/2 windows, wood soffits and fascia and early 20th Century front door. A distinctive feature of the house is its front stoop porch.

The house also features returned eaves, a salt box tail and a wood picket fence in the front.

From 2002 the restoration of the house was undertaken by Mark and Edward Casella.

#### Significant Attributes to be conserved:

- Wood board and batten siding;
- Wood, double hung windows;
- centre doorway;

- Wood front door;
- Overall form of the house;
- Original window and door openings, trim and sills;
- Roof profile;
- Wood soffits and fascia;
- Returned eaves;
- Picket fence; and
- Wood front porch.

Contextual Reasons:

The Albert Street Cottage is an important contributor to the character of Albert Street, the most intact residential street in the central part of Markham Village.

**1.2 Photographs Relevant to Duties of the Owner**

The Owner acknowledges that a set of dated photographs, hereinafter referred to collectively as "the Photographs", document the state of the Building as of the date of execution of this Agreement. The original photographs numbered HA 04 017616-1, HA 04 017616-2, HA 04 017612-3 and HA 04 017612-4 and dated September 1998 will be kept on file at the Town's offices or such other location as the Town may determine, and may be examined at any time upon reasonable notice to the Town. The Photographs generally depict certain significant features of the appearance or the construction of the Building and the Reasons for Identification and the Photographs shall be referred to in determining the duties of the Owner under this Agreement.

When alterations are made to the Building pursuant to paragraph 2.1 and/or 2.2, the Owner shall within ninety (90) days of completion of such alterations and at the Owner's expense, provide to the Town new photographs taken from the same vantage point and identifying the same features of the appearance or construction as the original photographs. Such photographs shall be dated and filed with the Town. The Town shall number the said photographs which shall replace the original Photographs and all references in this agreement to the Photographs shall be deemed to refer to such new replacement photographs.

**2.0 DUTIES OF OWNER**

**2.1 Normal Repairs and Alterations**

The Owner shall not, except as hereinafter set forth, without the prior written approval of the Town, undertake or permit any demolition, construction, alteration, remodelling or any other thing or act which would materially affect the features of the appearance or construction of the Building as set out in the "Reasons for Identification" and as may be depicted in the copies of the Photographs or drawings and other documents attached hereto. The approval required to be obtained from the

Town herein shall be deemed to have been given upon the failure of the Town to respond in writing to a written request for it within ninety (90) days of receiving such request as its address as set out in paragraph 7.1 of this Agreement. If the approval of the Town is given or deemed to be given under this paragraph, the Owner, in undertaking or permitting the construction, alteration, remodelling or other thing or act so approved of, shall use materials approved by the Town.

## 2.2 Insurance

The Owner shall at all times during the currency of this 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. Upon execution of this agreement, the Owner shall deliver to the Town a letter or certificate, in a form and from an insurance company, agent or broker acceptable to the Town, which letter or certificate shall state as follows:

"This will confirm that (name of insurer) has issued to the Owner a valid insurance policy which insures the Building 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 further agrees to provide written evidence of the renewal of such policy at least 3 weeks prior to the expiration date of the policy, in a form satisfactory to the Town. If the Owner fails to so insure the Building, or if any such insurance on the Building is cancelled, the Town may effect such insurance as the Town deems necessary and 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. All proceeds receivable by the Owner under any fire and extended coverage insurance policy or policies on the Building shall, on the written demand and in accordance with the requirements of the Town, be applied to replacement, rebuilding, restoration or repair of the Building to the fullest extent possible having regard to the Reasons for Identification, the particular nature of the Building and the cost of such work.



## 2.3 Damage or Destruction

The Owner shall notify the Town of any damage or destruction to the Building within ten (10) clear days of such damage or destruction occurring. 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 Town to demolish the Building, pursuant to paragraph 2.1. If the approval of the Town is given or deemed to be given, the Owner shall be entitled to retain any proceeds from the insurance hereinbefore mentioned and to demolish the Building.



#### **2.4 Reconstruction by Owner**

If the Owner has not requested the approval to demolish referred to in paragraph 2.3 or if the Town does not give the approval to demolish referred to in paragraph 2.3, the Owner shall replace, rebuild, restore or repair the Building so as to effect the complete restoration of the Building. Before the commencement of such work, the Owner shall submit all plans and specifications for the replacement, rebuilding, restoration or repair of the Building to the Town for its written approval within one hundred and thirty-five (135) days of the damage or destruction occurring to the Building. A refusal by the Town to approve any plans and specifications may be 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 Town shall be final. The Owner shall not commence or cause restorative work to be commenced before receiving the written approval of the Town of the plans and specifications for it, and such restorative work shall be performed upon such terms and conditions as the Town may stipulate. Such approval shall be deemed to have been received upon failure of the Town to respond in writing to a written request for it within ninety (90) days of the receipt of such request by the Town. 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 Town of the plans and specifications for it and to be completed within nine (9) months of commencement, or as soon as possible thereafter if factors beyond their control prevent completion within the said nine (9) months, and the Owner shall cause all such work to conform to the plans and specifications approved of and terms and conditions stipulated by the Town.



#### **2.5 Failure of the Owner to Reconstruct**

In the event that a request to demolish is not submitted or is refused pursuant to the provision of paragraph 2.3 and the Owner fails to submit plans and specifications pursuant to paragraph 2.4 which are acceptable to the Town within one hundred and thirty-five (135) days of the damage or destruction occurring to the Building, the Town may prepare its own set of plans and specifications. The Owner shall have thirty (30) days from receiving a copy of such plans and specifications to notify the Town in writing that they intend to replace, rebuild, restore or repair the Building in accordance with those plans and specifications.

If the Owner does not so notify the Town within the said thirty (30) days, the Town 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 Town for all expenses incurred by the Town in carrying out such work.



## **2.6 Maintenance of the Building**

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.**

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 Town. Such approval may, in the sole discretion of the Town and for any reason which the Town considers necessary, be refused, provided that with respect to signage to identify the occupant(s) of the Building from time to time, the approval of the Town shall not be unreasonably withheld, having regard to its use of the Building, the Reasons for Identification and the Photographs.

## **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 Town:

- (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;
- (c) allow the dumping of soil, rubbish, ashes, garbage, waste or other unsightly, hazardous or offensive materials of any type or description;
- (d) except for the maintenance of existing improvements, allow any changes in the general appearance or topography of the lands, including and without limiting the generality of the foregoing, the construction of drainage ditches, transmission towers and lines, and other similar undertakings as well as the excavation, dredging or removal of loam, gravel, soil, rock, sand or other materials;

- (e) allow the planting of trees, shrubs or other vegetation which would have the effect of (i) reducing the aesthetic value of the Building or the Property or (ii) causing any damage to the Building;
- (f) allow any activities, actions or uses detrimental or adverse to water conservation, erosion control and soil conservation; and
- (g) allow the removal, destruction or cutting of trees, shrubs or vegetation 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**

If the Town, in its sole discretion, is of the opinion that the Owner has neglected or refused to perform any of their obligations set out in this Agreement, the Town 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 Town's estimated maximum costs of remedying the breach. The Owner shall have thirty (30) days from receipt of such notice to remedy the breach or make arrangements satisfactory to the Town for remedying the breach.

If within those thirty (30) days the Owner has not remedied the breach or made arrangements satisfactory to the Town for remedying the breach, or if the Owner does not carry out the said arrangements within a reasonable period of time, of which the Town shall be the sole and final judge, the Town may enter upon the Property and may carry out the Owner's obligations and the Owner shall reimburse the Town for all expenses incurred thereby. Such expenses incurred by the Town shall, until paid to it by the Owner, be a debt owed by the Town and recoverable by the Town by action in a court of law.

## **2.10 Waiver**

The failure of the Town at any time to require performance by the Owner of any obligation under this Agreement shall in no way affect its right thereafter to enforce such obligation, nor shall the waiver by the Town 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.

## **2.11 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 Owner and the Town, 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.

## **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:

- (1) in keeping with the intentions of this Agreement;
- (2) consistent with the conservation of the Building, and
- (3) reasonably necessary to deal with an emergency which puts the security or 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 and, where time permits, the staff of the Heritage Section, Development Services Commission, is consulted.

## **3.0 Use of Property**

- 3.1 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 Agreement.

## **4.0 Inspection of the Property**

### **4.1 Inspection by Town at All Reasonable Times**

The Town 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 twenty-four (24) hours.

## **5.0 Notice of Easement**

### **5.1 Plaque**

The Owner agrees to allow the Town to erect a plaque on the Building, in a tasteful manner and at the Town's expense, indicating that the Town holds a conservation easement on the Property.

## 5.2 Publicity

The Owner agrees to allow the Town to publicize the existence of the easement.

## 6.0 Severability of Covenants

### 6.1 Proper Covenants Not to Terminate

The Owner and the Town 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 remaining covenants, easements and restrictions shall not terminate thereby.

## 7.0 Notice

### 7.1 Addresses of Parties

Any notices to be given under this Agreement shall be delivered to the parties at their respective addresses. The respective addresses of the parties for such purposes presently are as follows:

The Owner:

13924 Kennedy Road  
Stouffville, Ontario  
L4A 7X5

The Town:

The Corporation of the Town of Markham  
101 Town Centre Boulevard  
Markham, Ontario  
L3R 9W3

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

### 7.2 Service in Person or by Mail Except Where Postal Service is Interrupted

Except in the event of an interruption in the postal service, any notices to be given under this Agreement shall be delivered in person or sent by prepaid registered mail addressed to the parties at their respective addresses as set out in paragraph 7.1. In the event that a notice is delivered in person, the party receiving the notice shall forthwith indicate receipt of the notice by signing a form of acknowledgement of receipt, and in that event, the notice shall be deemed to have been received on the date on which the form of acknowledgement of receipt was signed. 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 presumed to have been received on the date of service as set out in such affidavit. In the event that a notice is sent by prepaid registered mail, it shall be deemed to have been received on the second clear day following the day on which the notice was sent.

### **7.3    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 7.1, either in person or by special courier. The party receiving the notice shall indicate the receipt of it by signing a form of acknowledgement of receipt, and the notice shall be deemed to have been received on the date on which the form of acknowledgement of receipt was signed. In the event that either party refuses to sign an acknowledgement of receipt of the notice, the person delivering the notice may swear an affidavit of service, and the notice shall be presumed to have been received on the date of service as set out in such affidavit.

### **8.0    Entirety**

#### **8.1    No Extraneous Agreements Between the Parties**

This written 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.

### **9.0    Subsequent Instruments**

#### **9.1    Subsequent Instruments to Contain These Provisions**

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.

#### **9.2    Notice to Municipality**

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

**10.0 Interpretation**

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

10.2 This Agreement shall be construed with all changes in number and gender as may be required by the context.

**11.0 Enurement****11.1 Covenants to Run With the Property**

The covenants, easements and restrictions set out in this Agreement shall run with the Property 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.

**12.0 Termination****12.1 Term of Agreement**

Notwithstanding any other provision of this Agreement, the term of this Agreement shall end on the date of receipt of approval to demolish pursuant to paragraph 2.4.

**13.0 General**

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

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

SIGNED, SEALED AND DELIVERED  
IN THE PRESENCE OF A WITNESS

*D Casella*

*[Signature]*  
MARK EDWARD CASELLA

*[Signature]*  
EDWARD ANTHONY CASELLA

THE CORPORATION OF THE TOWN  
OF MARKHAM

*[Signature]*  
MAYOR - DON COLESENS

DEPUTY MAYOR - FRANK SCARPITTA

*[Signature]*  
CLERK - SHEILA BIRRELL

*[Signature]*

APPROVED TOWN OF MARKHAM	
COMMITTEE <input checked="" type="checkbox"/>	RESOLUTION <u>2</u>
BY <u>DSC</u>	REPORT <u>37</u>
DATE <u>2004-154</u> DATE <u>JUNE 22/04</u>	
<u>DM</u>	

**SCHEDULE "A"**

ALL AND SINGULAR THAT certain parcel or tract of land and premises situate, lying and being in the Town of Markham, in the Regional Municipality of York, and being composed of Part Lot 4, Block S, Plan 157, as in MA107600.

Pin 02930-0346 (LT).