

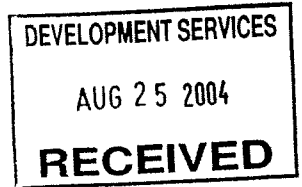
MEMORANDUM

**MEMO:** Clerks  
Regan Hutcheson, Manager, Heritage Planning  
Paul Wealleans, Director of Taxation

**FROM:** Stacy Larkin, Agreements Administration Clerk

**DATE:** August 25, 2004

**RE:** Lisa Locksley and Kevin Hebib  
Heritage Easement Agreement – Tax Program  
16 David Gohn Circle  
Legal File No. 04 0716 PA 0172



---

Please find attached a copy of the above noted agreement for your files. This agreement as registered on July 20, 2004 as Instrument Number YR504427.

  
Stacy Larkin  
Agreements Administration Clerk

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

**B E T W E E N:**

**LISA ANNE LOCKSLEY and KEVIN JOHN HEBIB**  
(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 16 David Gohn Circle hereinafter called the "Property"), and more particularly described in Schedule "A" attached hereto and which there is "The Jacob Size House" (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 house at 16 David Gohn Circle, was originally located at 248 Main Street Unionville, where it is believed to have been built c.1850 as the home for Thomas Cameron and his family. Thomas Cameron was a carpenter by trade, and as a result, it can be assumed that it was he who built the house.

The property on which the house originally stood was granted to John Daniel Frederick Busch of Kingston in 1804. In 1817, the lot was sold to John Size, who was at that time operating an inn and tavern in Kingston. John Size was born in Germany in 1768 (possibly with the surname of Seitz) and arrived in North America sometime prior to 1793. After his arrival he served from 1793 until 1796 with His Majesty's Marine Department on Lake Ontario. He was discharged from service on October 19, 1796. In 1800, he was married to Miss Elizabeth Vanderheyden, daughter of Joachim Gersham (Georshom) Vanderheyden and Elizabeth Smith at Schenactady Dutch Reformed Church in New York State.

By 1822, John Size, his wife Elizabeth and their children, John Jr., Sophia, Anthony, Jacob, Anna Maria, Margaret, Florentz, Peter, Eliza, William and James (a daughter Nanei Juliana was born in 1825) moved to their land in Markham Township. In 1820, John Size had also purchased the adjoining property on Lot 14, Concession 5.

The property on Lot 13, Concession 5 remained in the ownership of John Size until the time of his death in 1845. In the previous year, the northwest corner of the property had been sold to his son, Jacob Size. Jacob Size eventually purchased the southwest corner of the property in 1850, a

total land holding of 100 acres. In the year following the death of John Size, all but 1/4 acre of the eastern half of the property was sold to Ira White, the pioneer mill owner and builder who built the Union Mills after which the village was named. The 1/4 acre that was retained by Elizabeth Size was eventually sold in 1847 to her son-in-law Thomas Cameron, the husband of her youngest daughter Nanei Juliana. John Size, a dedicated Lutheran all his life, was buried in the Bethesda Lutheran Cemetery, Markham Township.

The Census of 1851 shows that Thomas Cameron was a carpenter (age 31) who lived on the property with his wife Juliana (age 25) with their son Peter (7) and daughter Marian (1). The family were members of the Presbyterian Church. In the Census it shows that the Cameron family were residing in a 1 1/2 storey frame house. It is believed that this is the house which stood at 248 Main Street Unionville, prior to relocation to the Markham Heritage Estates.

The Cameron's did not live long on the property as in May 1851 it was sold to the brother of Juliana Cameron, Jacob Size who was both a carpenter and blacksmith by trade. Little is known of the lives of the Cameron's after this sale. As was stated previously, Jacob Size also owned the property to the west of the house which he farmed. As he is described most frequently as a "Blacksmith" or "Carpenter" in Unionville Village, most evidence suggests, that the family moved to the house at 248 Main Street Unionville after 1851 and Jacob Size carried on his business activities in a separate building, behind the house.

Jacob Size was born in 1805 to John and Elizabeth Size in New York State, likely in Schenactady. He married first on 2 March 1831 to Sarah Van Horne, daughter of Abraham and Elizabeth (Hendrick) Van Horne of Markham Township. The couple had one son, Elisha, who died as an infant and Elizabeth died September 26, 1859. In 1860 Jacob married secondly to Elizabeth McDowell, born in 1835. Jacob died in 1887 and Elizabeth died on 11 November 1913. Their children were Sarah, Elizabeth, Rebecca, Ruth, J.G. (Gee), Lydia and Gersham. Throughout their lives Jacob and Sarah Size were active members of the Central United Church in Unionville.

Gersham Size never married and continued to live in the family home on Main Street Unionville with his mother. In business, Gersham operated a Harness Shop at the rear of his house and also served as a driver for Brown's Bakery. His sister Ruth, a dressmaker, also never married and it is believed that she lived in the house with her brother into their later years.

The last owners of the house in its original location in Unionville were a Mr. and Mrs. Dyke who made 248 Main Street their home for over 40 years.

In 1996, the house was threatened with demolition and was relocated to the Markham Heritage Estates subdivision by Kevin Hebib and Lisa Locksley, where it was restored.

Architectural Reasons:

The Size House is a good example of a vernacular 1 1/2 storey workers cottage with influences of the Gothic Revival Style. The house has a 3 bay facade with a central peaked gable. An interesting feature of the house is the fact that all of the windows on the south, north and east facades are intact as are a number of the storms. The original windows are 2/2 double hung with a Gothic peaked four pane window in the central gable. The second floor windows are unusually small, and are possibly evidence of an early date of construction for the house.

The original form of the original front part of the house has been largely unchanged. A large addition, clad in board and batten was constructed at the rear of the house in the Markham Heritage Estates subdivision.

Prior to its relocation, the building was clad in aluminium siding. This was clad over insul-brick which was installed over the original narrow clapboard siding. The original siding was exposed and restored during the restoration at the Markham Heritage Estates Subdivision.

The house had a stone foundation in its original location, half of which was a full height cellar. An interesting feature that was visible in the cellar part of the house was the fact that a number of the original beams are complete logs covered in bark.

In its original location, a coal stove was evidently the main source of heating in this house for a number of years and there was evidence of the old coal chute and storage area.

A historic photograph, c. 1940 indicates that the windows on the house were originally flanked by louvered wood shutters. Each of these was 1/2 the width of the window and attached to the window frame with hinges. The c.1940 photograph also shows evidence of original corbelled, red and yellow brick gable end chimneys, which are to be reconstructed as part of the restoration plan at the Markham Heritage Estates subdivision.

The c.1940 photograph of the house shows a stoop porch above the main entrance. This is believed to have dated from early in the 20<sup>th</sup> Century. A full width veranda has been constructed across the front of the house.

Significant attributes to be conserved:

- Overall form;
- Double hung wood windows with true divided lights;
- Front Veranda;
- All historic doors and reproduction doors;
- Louvered wood shutters;
- Clapboard siding;
- Gothic Revival Window; and
- Wood Shingle Roof.

Contextual Reasons:

In its original location at 248 Main Street Unionville, the Size house was a significant contributor to the streetscape of Main Street Unionville, north of Carleton Road. It was particularly important from an historic contextual perspective, since it was one of the last reminders of the time when the centre activity in Unionville was further north than it is today. The roots of Unionville were set in this area in the early 1800s, but gradually over the years, as the economic impact of the railway and Highway 7 were felt, the centre of the village moved southward.

**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 017610-1, HA 04 017610-2, HA 04 017610-3 and HA 04 017610-4, dated February 25, 2004 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;

### 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:

16 David Gohn Circle  
Markham, Ontario  
L6E 1A7

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

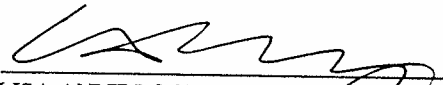
Notwithstanding any other provision of this Agreement, the term of this Agreement shall end on the date of receipt of approval to demolish pursuant to paragraph 2.4.

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.

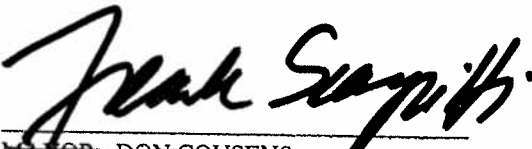
IN WITNESS WHEREOF the parties hereto have hereunto affixed their corporate seals attested by their respective proper signing officers in that behalf duly authorized.

SIGNED, SEALED AND DELIVERED )  
IN THE PRESENCE OF A WITNESS )

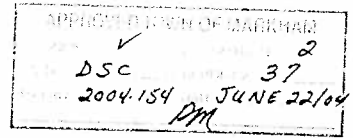
)  
)  
)  
)  
)  
)   
)  
) LISA ANNE LOCKSLEY

)  
)  
)  
)  
)  
)   
)  
) KEVIN JOHN HEBIB

)  
)  
)  
)  
)  
) THE CORPORATION OF THE TOWN  
) OF MARKHAM

)  
)  
)  
)  
)  
)   
)  
) MAYOR - DON COUSENS  
) Deputy Mayor - Frank Scarpitti

)  
)  
)  
)  
)  
)   
)  
) CLERK - SHEILA BIRRELL



**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 Lot 21, Plan 65M-2761.

PIN 03060-0023 (LT)