

MEMORANDUM


MEMO: Clerks
Michael Seaman, Planner; Heritage & Conversation
Geoff Day, Zoning Examiner
Michelle Perry, Cash Management
Dale Watterson, Financial Analyst

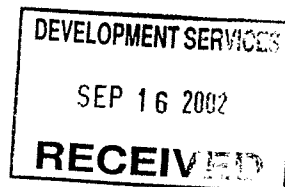
FROM: Stacy Larkin, Agreements Administration Clerk

DATE: September 13, 2002

RE: Humboldt Properties Limited
Heritage Easement Agreement
9516 Ninth Line
Legal File No. 02 0817 PA 0055

Please find attached a copy of the above noted agreement for your files. This agreement as registered on September 12, 2002 as Instrument Number YR203447.


Stacy Larkin
Agreements Administration Clerk



THIS EASEMENT AGREEMENT made this 1st day of March, 2002.

BETWEEN:

HUMBOLD PROPERTIES LIMITED
(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 9516 Ninth Line (hereinafter called the "Property"), and more particularly described in Schedule "A" attached hereto and which there is "The Adam Clendenen 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 as may be depicted in Schedule "B" attached hereto;

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 9516 Ninth Line (also known as 9642 9th Line) is believed to have been built c.1840 by Adam Clendenen, a member of one of Markham's most prominent early settler families.

The house is located on the north half of the eastern quarter of Lot 17, Concession 8. In 1803, John Clendenen Senior received the Crown grant for 200 acres in Lot 17, Concession 8, Markham Township.

In 1815, John Clendenen Senior died. Lot 17, Concession 8 was subdivided into 6 parcels of 25 or 50 acres for his descendants. The north-east 25 acres were willed to John Senior's son, Adam, who was killed during the latter part of the War of 1812.

In 1832, Quin Clendenen, likely Adam's son, sold the north-east corner to his cousin Adam Clendenen (1809-1894), son of William Clendenen. Adam also purchased the south-east 25-acres in 1832, thus acquiring the entire eastern quarter of Lot 17.

In 1884, Adam Clendenen sold the south half of the eastern quarter to Amos Cole. In 1892, Adam sold the north half of the eastern quarter to his nephew, Albert Wesley who leased the property to Adam's son, Herman Cecil Clendenen.

The 1851 Census report lists Adam Clendenen and his family at Lot 17, Concession 8, describing their home as a one-storey brick dwelling. The Ontario Assessment System database (Ministry of Revenue, York Regional Assessment Office) lists the date of construction for this building as

1840, category 'estimated and renovated'. Since the building was constructed prior to the 1851 Census and Adam purchased the lot in 1832, a circa 1840 date has been assigned as the probable date of construction.

A Clendenen family was originally Irish, but came to Upper Canada from the United States. They initially settled near Thorold before acquiring Lot 17, Concession 8 Markham Township in 1803.

The Clendenen Family Burial Plot is located near the centre of Lot 17, Concession 8. Five grave-markers still mark the final resting place of the early Clendenens.

According to the historic map of Markham c.1919, the property was owned at that time by a Mr. R. Eagleson.

ARCHITECTURAL REASONS

The house at 9516 Ninth Line (also known as 9642 9th Line) is a ½ story, red brick, farm house, built in the Georgian Style about 1840.

The house appears relatively small for its type, however, as with other houses of this style has a relatively spacious interior.

The house is built of red brick, part of which has been stuccoed on the front elevation. The house has a three bay facade with small, 2/2 windows flanking a central doorway with a transom. It is believed that originally, the windows were of a 6/6 pane division. The house has a substantial cornice on the main part of the house. There are no returns at the end of the eaves, however, it is believed that these originally existed. The house presently has shutters which are not original. It is likely that the house originally had louvered wood shutters on all of the windows. All windows feature substantial lug-sills beneath the window.

The wood panel door in the front doorway may be the original. This door was modified with a window at a later date. Originally it is likely that the door was a solid wood door.

The bricks appear to be of a local variety. They are laid in a common bond pattern with angled bricks over the windows and the door. It is possible that the house may have been bricked over at some point in the 19th Century. The house rests on a substantial and well built foundation of field stone. The house presently does not have chimneys on the gable ends, however, it is very probable that the house at one time did have brick chimneys on the gable ends.

To the rear of the house is a small, one-storey wing, with partial stone foundation under the easterly part. The remainder of the foundation of the wing is concrete. This provides indication that the wing was extended at some point. The wing is of frame construction and is presently clad in insulbrick.

The roof of the house is presently clad in asphalt shingles. Originally, the roof would have been clad in wood shingles of a 4½" weather.

The present stoop at the front of the house is not original. It is possible that the house at one time may have had door decoration or a 19th Century wood veranda of some appropriate type.

The interior of the house features substantial baseboards, window and door trim, and original wood floors in excellent condition. All of this is original to the house.

CONTEXTUAL REASONS

The Adam Clendenen House at 9516 Ninth Line (also known as 9642 9th Line) is of contextual significance and an excellent example of a mid-19th Century farmhouse built in the rural part of Markham. Although the lands around the house will ultimately develop, the house which is to be retained, will serve an important reminder of the historic agricultural tradition of Markham for years to come.

1.2 Photographs Relevant to Duties of the Owner

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

The Owner, when alterations are made to the Building, pursuant to paragraph 2.1 and/or 2.2, shall within ninety (90) days of a request by the Town and at the Owner's expense, provide photographs to the Town taken from the same vantage point and identifying the same features of the appearance or construction as the photographs contained in Schedule "B". Such photographs shall be incorporated immediately in Schedule "B" by way of amendment to this agreement, and shall replace the photographs contained in Schedule "B". After such amendments are made, all references in this agreement to the photographs contained in Schedule "B" shall be taken to be references to such 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, drawings and other documents attached hereto and incorporated herein as Schedule "B", and in the originals or facsimiles thereof which are filed in, and may be examined at the Town wherever they may be from time to time located. 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 a similar scaled new building with an exterior design complementary to that the existing structure. The Owner shall deposit with the Town upon execution of this Agreement, a certified copy of the insurance policy referred to above with limits and in a company that is acceptable to the said Commissioner of Corporate Services, and thereafter evidence satisfactory to the Town of the renewal of insurance shall be delivered to the Town at least three (3) clear days before the termination thereof. 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 contained in Schedule "B" attached hereto.

2.8 No Act of Waste

The Owner shall not commit or permit any act of waste on the Property. In respect to the subject lands, the Owner shall not, except with the prior written approval of the 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:
Humbold Properties Limited
1120 Finch Avenue West
Toronto, Ontario
M3J 3H7
Attention: Miguel Singer

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

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 Town

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 earliest to occur of 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.

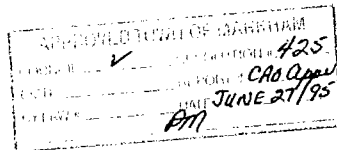
) HUMBOLDT PROPERTIES LIMITED

) Name: ROBERT Singer
) Title: A.S.O.

) THE CORPORATION OF THE TOWN
) OF MARKHAM

) MAYOR - DON COUSENS

) 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 320, Plan 65M- 3594

SCHEDULE "B"

WEST ELEVATION

SOUTH AND
WEST ELEVATIONNORTH AND EAST
ELEVATION

SCHEDULE "B"

SOUTH
ELEVATIONSOUTH AND
EAST
ELEVATIONSOUTH AND
EAST VIEW OF
HOUSE IN
1995

SCHEDULE "B"

WEST
ELEVATIONNORTH
ELEVATION