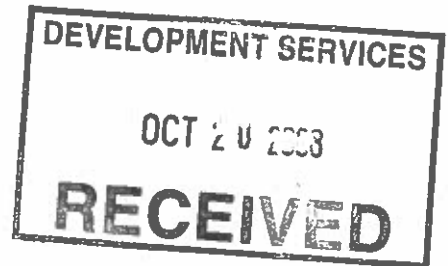


MEMORANDUM




MEMO: Clerks
George Duncan, Heritage Planner
Zoning Examiner
Michelle Perry/Dale Watterson, Financial Analyst
Sandy Oxley, Assessment Administrator

FROM: Stacy Larkin, Agreements Administration Clerk

DATE: October 20, 2008

RE: Fairglen Homes Ltd.
Heritage Easement Agreement
9765-9767 Kennedy Road
Amanda File No. HA 08 124582 (GD)
Legal File No. 08 0619 PA 0351

Please find attached a copy of the above noted agreement for your files. This agreement was registered on October 8, 2008 as Instrument Number YR1237331.


Stacy Larkin
Agreements Administration Clerk

THIS EASEMENT AGREEMENT made this 26th day of August, 2008.

BETWEEN:

FAIRGLEN HOMES LTD.
(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 9765-9767 Kennedy Road, Markham (hereinafter called the "Property"), and more particularly described in Schedule "A" attached hereto and which there is the "Henry Pingle Sr. 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 Value:

Henry Pingel was a son of Joachim and Anna Maria Pingel, who came from Holstein on the German-Danish border, and were part of the original Berczy settler group of families. They arrived in Philadelphia with William Berczy aboard the Catherina in 1792, and journeyed to Markham Township in 1794. The family homestead was on Lot 22, Concession 6, north of Unionville. Henry Pingel established a farm in the same neighbourhood on Lot 18, Concession 5, where he lived from c.1811 until he retired from farming in 1849. He led a detachment of the 1st Regiment of York Militia to Detroit in September 1813 with General Brock during the War of 1812. Henry Pingel married late in life at the age of 60 (1844). His wife was Anna Amelia (Emily) Stouffer, a widow with two daughters. They had one child together, Joseph Edwin Pingel. About 1849, Henry Pingel built a home for his retirement on a part of Lot 19, Concession 6, almost across the road from his old farm. The Pingels were active members of St. Phillip's Lutheran Church on Kennedy Road, south of their home. In 1913, the former Pingel property was purchased by George Weatherill. The Weatherill family remodelled the house to its current form in 1924, and continued to own the property until the mid 2000s.

Architectural Value:

In its original form, the Henry Pingel Sr. House was a one storey, brick Ontario Regency Cottage. An historical photograph shows the house with a wood-shingled, low pitched hip or cottage roof, Flemish bond brickwork, 6 over 6 windows with louvered shutters, and the front door enclosed within a wood, gable-roofed storm porch. The Ontario Regency Cottage style, a house type that enjoyed its greatest period of popularity in the province during the 1830-1860 period, is generally associated with British settlers as it was a colonial form used in the various outposts of the British Empire in the 19th century. The Ontario Regency Cottage was therefore not a common

house type in Markham, given the township's strong Germanic population, therefore its use for the Henry Pingel Sr. House is an indication that the homes of some Germanic families were influenced by the work of British builders. In 1924, the house was remodelled to a bungalow cottage form with a half storey under a low-pitched gable roof, while many of the building's original mid 19th century elements were retained. The present character of the house reflects the American Arts and Crafts Movement, with the stucco treatment and heavy stucco verandah showing a Spanish-American influence. The Henry Pingel Sr. House is a noteworthy example of an evolved building that reflects two distinct periods of development as an indication of the changing needs and tastes of different families over time.

Contextual Value:

As a home of one of the original Berczy settlers, the Henry Pingel Sr. House is significant as a reminder of the early settlement of Markham under the leadership of William Berczy. In its current form as an Arts and Crafts Bungalow, the house reflects the early 20th century period of Markham's development as a mature agricultural community. The Henry Pingel Sr. House is one of a cluster of 19th century buildings that are found in the vicinity of the historic crossroads community of Colty's Corners, an area that has been transformed from an agricultural landscape to its present suburban form.

Description of Significant Architectural Features to be Conserved:

Exterior, character-defining elements that embody the cultural heritage value of the Henry Pingel Sr. House include:

- overall form of the building, including the rear addition;
- stucco finish over red brick;
- low pitched gable roof with wide, bracketed eaves and shed dormer;
- stucco front verandah with arched openings, rectangular posts and closed railing;
- wood 6/1 sash-style windows with projecting sills;
- wood 4/4 windows;
- front doorcase with 6 panelled wood door, multi-paned transom light and wood sidelights.

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 08 124582-1, HA 08 124582-2, HA 08 124582-3, HA 08 124582-4 and HA 08 124582-5 dated August 25, 2008 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 on file 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 at 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, in accordance with 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

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 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 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:

10148 Warden Avenue
Markham, Ontario
L6C 1N3

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 No Extraneous Agreements Between the Parties

Except as set out herein, 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 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 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 2.3.

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 duly attested to by their proper signing officers in that behalf.

SIGNED, SEALED AND DELIVERED) FAIRGLEN HOMES LTD.

)
)
)
)
)
)

) Name: EUGENIO PERCINSKY
) Title: PRESIDENT
)
)
)

) Name:
) Title:
)
)

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

) Frank Scarpitti
)
) MAYOR - FRANK SCARPITTI
)
)
)



) [Signature]
)
) CLERK - KIMBERLEY KITTERINGHAM
)
)

APPROVED TOWN OF MARKHAM	
COUNCIL <input checked="" type="checkbox"/>	RESOLUTION <u>13</u>
DATE <u>F.E.A</u>	REPORT <u>2</u>
BY <u>[Signature]</u>	DEC <u>10/04</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 Lot 12, Plan 65M-4094.