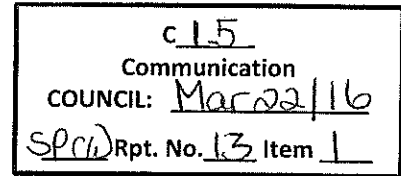


Magnifico, Rose

Subject: FW: Special Committee of the Whole Report No. 13 - Item 1
Attachments: OMB Decision Knoll 1.pdf; ATT00001.htm; OMB Knoll 2.jpg; ATT00002.htm; OMB Knoll 2A.jpg; ATT00003.htm; OMB Knoll Heritage Conservation Easement Agreement 10384 Islington.pdf; ATT00004.htm



From: Richard Lorello <rlorello@rogers.com>

Sent: Sunday, March 20, 2016 7:32 PM

To: Bevilacqua, Maurizio; Di Biase, Michael; Rosati, Gino; Ferri, Mario; Carella, Tony; DeFrancesca, Rosanna; Racco, Sandra; Iafrate, Marilyn; Shefman, Alan; MacKenzie, John; Kanellakos, Steve; Abrams, Jeffrey

Reply To: Richard Lorello

Cc: Maria Verna; Ciampa, Gina; JAMIE MAYNARD; mariavernrs@rogers.com; Gi Pi; Tricia. Santaguida.; Noor Javed; Adam Martin-Robbins

Subject: RE: Special Committee of the Whole Report No. 13 - Item 1

Good Day Mayor / Members of Council and Staff

Mr. Abrams, please post this communications in advance of the March 22 1:00pm Council Meeting.

I would like to bring the attached documents and the following information to Council's attention for serious consideration.

With respect to the proposed 7 storey development with in the Woodbridge Heritage District, there are considerations that were not taken into account when considering this development. I would like to draw your attention a similar issue that was the subject of an October 2009 OMB appeal decision (PL060606). In that decision there was a similar contentious issue on a Kleinburg development adjacent to the Martin Smith heritage home at 10360 Islington Ave.

Within the context of the OMB ruling, there are striking similarities between Martin Smith House in Kleinburg and the McLean House in Woodbridge. The ruling on the Martin Smith House in Kleinburg essentially states that the presevation of heritage is not only restricted to the structure but its topography as well. The topography "grassy knoll (hill)" was a key factor in the preservation the Martin Smith House and the Kleinburg Village as well. I believe that the OMB ruling also applies to the McLean House and the Woodbridge Village. In actuality, the topography on which the McLean House sits is much more pronounced than that of the Martin Smith House in Kleinburg.

Therefore I would submit that the proposed leveling of the topography on which the McLean House sits, would affect the heritage value of the McLean House and the heritage value to the Village of Woodbridge, just as OMB ruling found in the topography of the Martin Smith House in Kleinburg. Based on the OMB ruling and agreement, there is a strong arguement here based on precedent that the McLean House cannot be moved from its existing topography in that it is also perched on a knoll which has "contextual value" on its existing location and thus constitutes an important element to its heritage.

The Martin Smith home in Kleinburg was protected as a heritage home but in addition the knoll ("grassy hill), was also protected as part of its historical "Contextual Value" and significance. The OMB ruling and agreement referred to this as the "Contextual Value".

The first attachment (OMB ruling and appeal (PL060606) is significant and creates a precedent for all heritage homes in Vaughan. It includes the OMB decision which states that no permits will be granted to the developer until he had signed off with the City an agreement to protect the heritage components - This is clearly stated on page 9 of the first attachment.

The schedules attached and included in the OMB decision clearly illustrates and identifies the "knoll" deemed by the OMB to have "contextual value".

The Heritage Conservation Agreement that was referenced on page 9 of the OMB decision is a document that is registered on title (Notice YR1442866) of the property. On page 14 of the agreement the "Contextual Value" clause is highlighted and deemed to be part of the "Heritage Value" of the Martin Smith home. It clearly states the following;

"Contextual Value"

"The Martin Smith House is situated on the west side of Islington Ave and sites on an elevated "knoll" as you enter the Kleinburg historic village core when travelling north on Islington Avenue. It is one of the first heritage buildings entering the core area and acts as an important gateway to the Kleinburg Heritage Conservation Districts"

Council must take the same approach and view with respect to the "knoll" or hill where the McLean House is situated within the Woodbridge Conservation District. It can be demonstrated through the street photos of this area that the elevated "knoll/hill" is significant to the Heritage Value of the Woodbridge Village and the historical nature of the McLean House. The proposed development will destroy the historical streetscape value and we are arguing that it needs to be protected in order to protect the "contextual value" of the home and the Woodbridge Village itself.

Also see the extracts of the Council minutes.

http://www.vaughan.ca/council/minutes_agendas/Extracts/32cw0618_13ex_38.pdf

See page 9 where it states;

In the implementing Zoning By-law, a minimum distance of 7 m is required between the existing Martin Smith House and the proposed Mill Building (Building "C") and 8.1 m is required between the proposed Manor Building (Building "B") and the Mill Building (Building "C") in order to provide a more natural and historical setting for the Martin Smith House with landscaped/open space areas surrounding the building with the retention of the grassy knoll (hill) in the front and side yards.

Now see the Heritage Vaughan Committee report from October 21, 2015, where the reference to the McLean House knoll is the same.

[http://www.vaughan.ca/council/minutes_agendas/AgendaItems/HV1021_15_5\(part1\).pdf](http://www.vaughan.ca/council/minutes_agendas/AgendaItems/HV1021_15_5(part1).pdf)

Page 22 reference McLean House

The building is perched on a "knoll" which appears to have originally been connected to the broader topography of the surrounding river valley and the elevated rail corridor.

The precedent set with the Martin Smith House in Kleinburg cannot be ignored and must be applied to the McLean House in Woodbridge. We cannot afford to have a double standard when it comes to the heritage of this City.

Secondly and furthermore, I have provided the following link to the Woodbridge Heritage Conservation Study and Plan;

https://www.vaughan.ca/services/business/heritage_preservation/General%20Documents/Woodbridge%20Heritage%20Conservation%20District%20Plan%20and%20Guidelines.pdf

The Woodbridge Heritage Conservation Study and Plan clearly states and makes several references to 45 degree angular plane required when developing new structures adjacent to Woodbridge Heritage homes. It states the following;

2. Generally, new buildings along Woodbridge Avenue should be no taller than 4 floors (13m) and must be sympathetic to, and transition from, the height of adjacent contributing buildings with a minimum of 45 degree angular plane, starting from the existing height of the contributing building, measured at the building's edge, (see section 6.4 - Built Form Framework).

The proposed condominium development does not conform to the stipulation of the 45 degree angular plane within the rules described in the Woodbridge Heritage Conservation Study. The proposed condominium does not comply with the VOP 2010 Official Plan. We request that Council adhere to the plans and studies that taxpayers have spent millions of dollars to develop. We do not view the VOP 2010 Official Plan and Woodbridge Heritage Conservation Study and Plan as mere guidelines, but rather they are firm development boundaries that Council and developers must not only respect, but also abide by.

Based on the information presented herein, we request that Council remove its support and endorsement of the proposed development and let it proceed to the OMB with the City taking on the role of Party status to defend any appeal of VOP 2010 Official Plan and the Woodbridge Heritage Conservation Study that the applicant may bring forth.

Sincerely

Richard T. Lorello

C / O Village of Woodbridge Ratepayers' Association

ISSUE DATE:

Oct. 05, 2009



Ontario

Ontario Municipal Board

Commission des affaires municipales de l'Ontario

PL060606

IN THE MATTER OF subsection 17(36) of the *Planning Act*, R.S.O. 1990, C. P. 13, as amended

Appellant: 10360 Islington Avenue Inc.
Appellant: Gioseffina (Josie) Greco-Alviani & Fabio Alviani
Subject: Proposed Official Plan Amendment No. 633
Municipality: City of Vaughan
OMB Case No. PL060606
OMB File No. O070059

IN THE MATTER OF subsection 34(19) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended

Appellant: Frank Greco
Appellant: Elisa Vallescura
Subject: By-law No. 167-2006
Municipality: City of Vaughan
OMB Case No. PL060606
OMB File No. R060141

IN THE MATTER OF subsection 42(6) of the *Ontario Heritage Act*, R.S.O. 1990, c. O. 18, as amended

Appellant: 10360 Islington Avenue Inc. and J & F Alviani
Subject: Appeal of the Decision of Council on an application to permit the erection of a building on properties 10360 and 10384 Islington Avenue located within the Kleinburg-Nashville Heritage Conservation District
Property Address: 10360 & 10384 Islington Avenue
Municipality: City of Vaughan
OMB Case No. MM080059
OMB File No. MM080059

IN THE MATTER OF subsection 42(6) of the *Ontario Heritage Act*, R.S.O. 1990, c. O. 18, as amended

Appellant: 10360 Islington Avenue Inc. and J & F Alviani
Subject: Appeal of the Decision of Council on an application to permit the erection of a building on properties 10360 and 10384 Islington Avenue located within the Kleinburg-Nashville Heritage Conservation District, which revises the heritage permit application under OMB Case & File No. MM080059
Property Address: 10360 & 10384 Islington Avenue
Municipality: City of Vaughan
OMB Case No. MM090007
OMB File No. MM090007

10360 Islington Avenue Inc. has appealed to the Ontario Municipal Board under subsection 22(7) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended, from Council's refusal or neglect to enact a proposed amendment to the Official Plan for the City of Vaughan to include policies to permit a range of uses consisting of Institutional (including private school and daycare centre, retirement residence), Museum, Community Facility, Mainstreet Commercial & Residential uses, Multi-unit Residential Condominium within the existing heritage structure (Martin Smith House), as well as a range of uses consisting of a new multi-unit building ranging in height from 2-5 storeys for the purpose of either a residential condominium or a retirement residence, Institutional uses (including private school & daycare centre) & Mainstreet Commercial uses on lands located on the west side of Islington Avenue, south of Nashville Road, municipally known as 10360 & 10384 Islington Avenue in the Village of Kleinburg, City of Vaughan, designated as "Kleinburg Core" by Official Plan Amendment No. 601, as amended by Official Plan Amendment No. 633

Approval Authority File No. OP.07.004

OMB Case No. PL080178

OMB File No. PL080178

10360 Islington Avenue Inc. has appealed to the Ontario Municipal Board under subsection 34(11) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended, from Council's refusal or neglect to enact a proposed amendment to Zoning By-law No. 1-88, as amended, of the City of Vaughan to rezone lands municipally known as 10360 & 10384 Islington Avenue in the Village of Kleinburg, City of Vaughan, from "R1 Residential Zone" and "RM2 Multiple Residential Zone" to "OS1 Open Space Conservation Zone" and "RM2 Multiple Residential Zone", with the addition of Exceptions for the minimum lot area per unit requirement, parking requirements, parking and access requirements, permitted uses, maximum building height, setbacks, the amount of landscaped area and the landscaping strip requirements to permit a range of uses consisting of Institutional (including private school and daycare centre, retirement residence), Museum, Community Facility, Mainstreet Commercial & Residential uses, Multi-unit Residential Condominium within the existing heritage structure (Martin Smith House), as well as a range of uses consisting of a new multi-unit building ranging in height from 2-5 storeys for the purpose of either a residential condominium or a retirement residence, Institutional uses (including private school & daycare centre) & Mainstreet Commercial uses

Approval Authority File No. Z.07.031

OMB Case No. PL080179

OMB File No. PL080179

APPEARANCES:

Parties

City of Vaughan

Counsel*/Agent

L. Townsend* and C. Storto*

10360 Islington Avenue Inc., Gioseffina
Greco-Alviani, Fabio Alviani and Frank
Greco

M. Flynn-Guglietti*

Daniel Rea

I. Kagan*

Toronto and Region Conservation Authority

J. Wigley*

**MEMORANDUM OF ORAL DECISION DELIVERED BY D. R. GRANGER
ON SEPTEMBER 23, 2009 AND PARTIAL ORDER OF THE BOARD**

This is a hearing of the appeals by Gioseffina Greco-Alviani, Fabio Alviani and Frank Greco, all now associated with 10360 Islington Avenue Inc., (Appellants), against City of Vaughan (City) Official Plan Amendment No. 633 (OPA 633) and By-law 167-2006 enacted for the Kleinburg Community Secondary Planning area and from the City Council's refusal to approve applications for an amendment to the City Official Plan, Zoning By-law I-88 (By-law) and to permit an alteration to property in the Kleinburg-Nashville Heritage Conservation District Plan to facilitate the development of a residential/institutional complex (Proposal) at 10360 and 10384 Islington Avenue (Subject Property).

This hearing was originally scheduled to commence on August 31, 2009. The parties, however, agreed to engage in a Board, otherwise constituted, mediation at that time.

At the commencement of the hearing on September 15, 2009, the Board was informed that following two weeks of intensive efforts to resolve the dispute, a Settlement in Principle had been reached between the parties. The settlement results in a considerably smaller proposal.

The Settlement in Principle was scheduled to go before City Council on September 21, 2009 in the form of Minutes of Settlement, a Heritage Easement Agreement and the final forms of the Official Plan and Zoning By-law amendments.

The parties consented to the Board adjourning to reconvene on Wednesday September 23, 2009 to hear evidence of the settlement. All parties and participants were to be able to review the proposal that results from the Settlement in Principle in the interim.

Participants York Region District School Board (YRDSB), Kleinburg Area Ratepayers Association (KARA), John McMahon and Sandra DeZen were in attendance at the September 15, 2009 commencement of the hearing. Participants Richard Lorello, Jory Kesten and Nadia Lazzarino were not in attendance but the Board was informed by Counsel of their desire to continue to be listed as participants.

Participants originally listed, Tony Spina and Denis Nazzicone, have provided no indication of their continued status, have not filed Participant Statements nor have attended at the commencement of the hearing having being so notified. The Board removes their status as participants.

Upon reconvening on September 23, 2009, the Board was informed that a settlement had been reached with the City, Toronto and Region Conservation Authority (TRCA) and the Appellants. Counsel for the only other party, Daniel Rea owner of an abutting single family home to the south of the Subject Property, confirmed that he was not opposing the settlement.

As a result of the settlement, Counsel for the Appellants confirmed its withdrawal of its appeal against By-law 167-2006. There being no objection, the Board accepts the withdrawal of the appeal. The Board's file is now closed in that regard. By-law 167-2006 is in effect.

Participants KARA and Nadia Lazzarino attended on September 23, 2009 and presented evidence in opposition to the settlement. KARA expressed concerns including the loss of trees and the addition of another building on the property associated with the historic Martin Smith House. It believes that the scale of the proposal is still not consistent with the village of Kleinburg and that the Martin Smith House should remain as a single family home. Ms Lazzarino expressed her and her neighbours' concerns including the separation between the proposal and residential properties to the immediate south of the Subject Property, appropriate landscaping and

buffering, vehicular access and the garbage collection location. She believed the proposed coverage on the Subject Property to be excessive.

Participant YRDSB attended on September 23, 2009 and confirmed its satisfaction with the settlement.

Participants Sandra DeZen and Jory Kesten attended on September 23, 2009 and presented evidence in support of the settlement. Ms DeZen set out the expense and some frustration involved in trying to maintain heritage properties and the need to support business initiatives such as the Proposal in that regard. Mr. Kesten set out what he believed to be the need for alternative forms of housing, such as the Proposal, that would allow older residents with larger homes to be able to scale down and remain living in the community.

L. Jones, on behalf of the Appellants, provided expert land use planning evidence and opinion in support of the settlement that results in a site specific Official Plan Amendment No. 703 (OPA 703), presented as Exhibit No. 4, and a site specific By-law amendment, presented as Exhibit No. 5.

D. Birchall, on behalf of the City, provided expert land use planning and urban design policy evidence and opinion in support of the settlement including OPA 703, the proposed By-law amendment and a further modified OPA 633, presented as Exhibit No. 7.

No other expert land use planning evidence or opinion was proffered.

With respect to the appeals pursuant to the *Ontario Heritage Act*, the parties have requested that the Board withhold any Order pending completion and approval of the required site plan and agreement. They submit that a permit should only issue pursuant to subsection 42 (8) of the *Ontario Heritage Act* based on the development proceeding substantially in accordance with the Proposal as now settled and set out in Exhibit No. 3 subject to the satisfactory completion of the site plan approval process.

With respect to the other planning instruments, the parties seek the approval of OPA 703, acknowledged to be a Subject Property site-specific amendment to the applicable Official Plan Amendment No. 601 (OPA 601) being the Kleinburg-Nashville

Community Plan; the proposed site-specific By-law amendment; and, a modified OPA 633 being an amendment to OPA 601 that incorporates policies based upon the findings presented in the Kleinburg-Nashville Heritage Conservation District Study and Plan and to include policies recommended in the Kleinburg Core Area Policy Review with specific regard to more clearly defining “mainstreet commercial area.”

Having considered all of the evidence presented, including the evidence of two qualified expert land use planners who were not contradicted, the Board finds that OPA 703, the proposed amendment to By-law I-88 and OPA 633, as further modified, are consistent with the Provincial Policy Statement (PPS), conform to the Growth Plan for the Greater Golden Horseshoe (GP), conform to the Region of York Official Plan (ROP) and the City Official Plan (OP). The Board finds that these instruments are appropriate, represent good planning and to be in the overall public interest of the community.

The reasons follow.

The Board puts great weight on the fact that the Proposal set out in Exhibit No. 3 results from a settlement between the landowner, the City and the TRCA with the only other party, Daniel Rae, not opposing and providing no evidence at this hearing.

The Proposal now permits a multi-unit residential development with a maximum of 52 units and a maximum gross floor area of 4416 square metres or an apartment dwelling with a maximum of 80 residential suites (retirement home) and a maximum gross floor area of 4416 square metres and the use of the existing heritage structure (Martin Smith House 260.13 square metres) as amenity area. Building heights will transition from a two-storey façade facing Islington Avenue to three-storeys backing onto the Humber River valley. The site will be subject to a holding provision in the proposed By-law amendment related to servicing. A portion of the site related to the Humber River valley will be dedicated to the TRCA, including a 7.5-metre strip along and above the top-of-bank. No development, other than appropriate landscaping will occur within 10 metres of the top-of-bank.

The City carries the responsibility and has the jurisdiction to identify and protect, through the *Ontario Heritage Act* designation, properties of significant heritage importance as well as setting out through the *Planning Act*, land use designations

needed to satisfy matters of Provincial interest, in this case, development in the form of housing, natural heritage protection and cultural heritage protection.

Section 4.5 of the PPS sets out that the Official Plan is the most important vehicle for implementation of the PPS. Today, two well-qualified expert land use planners have unequivocally provided evidence and expressed their opinions that the Proposal, and resulting planning instruments noted previously, as settled between the parties, conform to the applicable Official Plans, including the applicable OPA 601, as well as conforming to and being consistent with the broader Provincial development, natural heritage and cultural heritage policies of the GP and of the PPS respectively. The evidence and opinions of these land use planners were not contradicted.

Four participants have come forward to have their evidence tested at this hearing. Two in favour of the proposal and two opposed.

KARA has been helpful in understanding the character of the village area of Kleinburg and its importance to the community. KARA has a long history of involvement in the planning process and through such experience has come to be wary of commitments made regarding proposed development. In this case, based on the evidence and submissions made, the Board is satisfied that the settlement has addressed protections to a level of detail that will ensure commitments being fulfilled. The evidence is clear. What is now proposed affords much more protection of the public interest over what presently is permitted as-of-right and over what is already approved and registered on the southern portion of the Subject Property. These protections include the preservation, restoration and ongoing maintenance of an existing designated heritage building; the rehabilitation and dedication to the TRCA of a significant area of Humber River valley land; and, the development of a relatively small scale low-rise condominium apartment or retirement unit complex. This is a proposal that has now been endorsed by the City Council and one that presents a form of housing that may afford a greater choice for older residents in the community being able to stay in the community.

Many of the concerns expressed by the participants in opposition to the Proposal are matters to be considered and resolved through the site planning approval process. The City confirmed it a normal practice to consider input from area residents prior to

final site plan approval and in this case assured that KARA and Ms Lazzarino would be afforded that opportunity.

The land use planner for the Appellant confirmed her opinion in support of the Proposal relying on several professional reports submitted with the application including a Heritage Impact Assessment, Functional Servicing Study, Traffic Analysis, Geotechnical Study, Scoped Environmental Study and Archaeological Study. None of these studies were called into question by any other evidence presented. She confirmed her opinion that in light of the extensive study undertaken, the Proposal represents good planning and recommended approval.

The land use planner for the City confirmed that an extensive open, public process preceded the adoption of OPA 633 including the Kleinburg Core Area Study undertaken by Ted Davidson (Consultants) Inc. With respect to the site-specific planning instruments, she relied upon the evidence of the land use planner for the Appellant and supported the settlement achieved.

The Board has carefully considered all of the evidence presented. The evidence of the two land use planners was not contradicted nor put into question as a result of the evidence presented by those participants opposed to the Proposal. Their evidence was succinct and carefully addressed the applicable policies as required by Provincial, Regional and City planning instruments. The Board adopts and relies on that evidence.

In conclusion, with respect to the appeal from the City's refusal to enact a proposed amendment to the City OP, on consent of the parties, the Board **Orders** that the appeal is allowed and the City of Vaughan Official Plan (specifically Official Plan Amendment No. 601) is amended as now set out in Official Plan Amendment No. 703 presented as Exhibit No. 4.

With respect to the appeal from the City's refusal to enact an amendment to By-law I-88, on consent of the parties, the Board **Orders** that the appeal is allowed and By-law I-88 is amended in the form of Exhibit No. 5. The municipal clerk is authorized to assign a number to this by-law for record keeping purposes.

With respect to the appeal against Official Plan Amendment No. 633, on consent of the parties, the Board **Orders** that the appeal is allowed, in part, and Official Plan Amendment No. 633 is modified as set out in Exhibit No. 7 and as modified is approved. In all other respects, the appeal against Official Plan Amendment No. 633 is dismissed.

As noted previously, the appeal against By-law 167-2006 is withdrawn. By-law 167-2006 is in effect.

With respect to the appeals pursuant to subsection 42 (6) of the *Ontario Heritage Act*, on consent of the parties, the appeals are allowed and a permit will be issued subject to the development occurring substantially in the form of the drawings set out in Exhibit No. 3 and subject to the approval of a site plan and agreement by the City. At the request of the parties, the Board will withhold its Order that a permit be issued pursuant to subsection 46 (8) of the *Ontario Heritage Act* pending approval of the site plan and agreement by the City until June 25, 2010, acknowledged by the parties to be a reasonable time frame to accomplish same. Should difficulties arise, the Board may be spoken to. This Board Member is seized in that regard.

The Board commends the efforts of the parties in settling this dispute.

"D. R. Granger"

D. R. GRANGER
VICE CHAIR

The applicant(s) hereby applies to the Land Registrar.

yyyy mm dd Page 1 of 1

Properties

PIN 03323 - 0417 LT

☒ Affects Part of Prop

Description PT LT 23 CON 8 PTS 2 & 3 65R30390, VAUGHAN

Address 10384 ISLINGTON AVENUE
VAUGHAN**Consideration**

Consideration \$ 2.00

Applicant(s)

The notice is based on or affects a valid and existing estate, right, interest or equity in land

Name GRECO-ALVIANI, GIOSEFFINA

Address for Service 10384 Islington Ave
Kleinburg, Ontario
L0J 1C0

This document is not authorized under Power of Attorney by this party.

Name ALVIANI, FABIO

Address for Service 10384 Islington Ave
Kleinburg, Ontario
L0J 1C0

This document is not authorized under Power of Attorney by this party.

Statements

This notice is pursuant to Section 71 of the Land Titles Act.

This notice is for an indeterminate period

Schedule: See Schedules

Signed By

Barry McIntyre

181 Bay Street, Suite 4400,
Brookfield Place
Toronto
M5J 2T3acting for
Applicant(s)

Signed

2010 02 19

Tel 4168657094

Fax 4168657048

I have the authority to sign and register the document on behalf of the Applicant(s).

Submitted By

MCMILLAN LLP

181 Bay Street, Suite 4400,
Brookfield Place
Toronto
M5J 2T3

2010 02 19

Tel 4168657094

Fax 4168657048

Fees/Taxes/Payment

Statutory Registration Fee \$60.00

Total Paid \$60.00

File Number

Applicant Client File Number :

85837

HERITAGE CONSERVATION EASEMENT AGREEMENT

THIS HERITAGE CONSERVATION EASEMENT AGREEMENT made this 5th day of January, 2010

BETWEEN:

THE CORPORATION OF THE CITY OF VAUGHAN
(the "City")

OF THE FIRST PART

-and-

GIOSEFFINA (JOSIE) GRECO-ALVIANI and FABIO ALVIANI
(the "Owner")

OF THE SECOND PART

WHEREAS the Owner is the Owner of land situated in the City, known municipally as 10384 Islington Avenue (the "Property"), and more particularly described in Schedule "A" to this Agreement;

AND WHEREAS one of the purposes of the *Ontario Heritage Act* R.S. O. 1990, c. O18, as amended (the "*Heritage Act*") is to support, encourage and facilitate the conservation, protection and preservation of the heritage of Ontario;

AND WHEREAS by Section 37(1) of the *Heritage Act*, the City may enter into easements or covenants with Owners of real Property or persons having interests therein, for the conservation of Property of historic or architectural value or interest;

AND WHEREAS by Section 37(3) of the *Heritage Act* such covenants and easements, when registered in the proper Land Registry Office against the real property affected by them shall run with the real property and may be enforced by the City or its assignee against the Owners or any subsequent Owners of the real property, even where the City owns no other land which would be accommodated or benefited by such covenants and easements;

AND WHEREAS the Owner and the City have the common purpose of preserving the heritage value of the Property through the protection and conservation of its appropriate architectural and heritage characteristics and conditions and to this end, the Owner and the City desire to enter into this Agreement;

AND WHEREAS the City and the Owner desire, by way of this Heritage Conservation Easement Agreement (the "*Agreement*") to secure the conservation, maintenance, restoration, and repair of architectural and heritage characteristics and conditions of the Property as set out in this Agreement;

WITNESSETH that in consideration of the sum of Two Dollars (\$2.00) and other good and valuable consideration now paid by the Owner to the City (the receipt and sufficiency of which is hereby acknowledged), and in consideration of the mutual covenants and restrictions hereinafter set out, the parties hereto hereby covenant and agree as follows:

1.0 RECITALS, SCHEDULES AND PURPOSE

- 1.1 The recitals and Schedules form part of this Agreement.
- 1.2 All italicized terms shall have the meaning specifically ascribed to them in this Agreement.
- 1.3 It is the purpose of this Agreement to ensure that the heritage value of the Property will be preserved in perpetuity. To achieve this purpose, the City and the Owner agree that the heritage features will be retained, maintained and conserved by the Owner through the application of recognized heritage conservation principles and practices and that no change shall be made to the

heritage features that will adversely affect the heritage value of the Property as set out in the Statement of Cultural Heritage Value attached hereto as Schedule "B".

- 1.4 Any reference in this *Agreement* to the *Property* includes the *Building*.

2.0 HERITAGE FEATURES

2.1 Cultural Heritage Value

- 2.1.1 The *Owner* and the *City* agree that the cultural heritage value and the heritage features of the *Property* that are to be conserved under this *Agreement* in order to preserve and protect the heritage value of the *Property* are as set out in the Heritage Impact Assessment, revised, dated December 9, 2008 authored by Mr. R. Coombs, Nexus Architects and as found in Schedule B attached hereto. This report and Schedule B also constitute the baseline documentation depicting and describing the appearance, condition and construction of the *Building* and its surrounding grounds. The *Owner* acknowledges that these constitute an accurate depiction and description of the current appearance, condition and construction of the *Building* and its surrounding grounds. The baseline documentation shall be referred to in preparation of the Conservation Plan referred to in this *Agreement* and where otherwise applicable in determining the respective responsibilities and duties of the *Owner* and the *City* under this *Agreement*.

- 2.1.2 It is agreed that when the Conservation Plan is prepared that where possible and while recognizing the new use of the building, efforts will be made by the *Owner* in consultation with the *City* to conserve interior features where feasible.

3.0 CONSERVATION PRINCIPLES, STANDARDS AND GUIDELINES

- 3.1 Both the *Owner* and the *City* in carrying out their respective responsibilities and duties under this *Agreement* shall, where applicable, be guided by and apply the conservation principles set out in Parks Canada's "Standards and Guidelines for the Conservation of Historic Places in Canada" (2003), as revised from time to time, and recognized heritage conservation best practices (herein the "*Conservation Principles and Practices*"). The current edition of the Parks Canada Standards are attached as Schedule "C" hereto.

4.0 DUTIES OF OWNER

4.1 Maintenance

- 4.1.1 The *Owner* shall at all times and, subject to compliance with the requirements of this *Agreement*, maintain the *Property* in as good and sound a state of repair as a prudent *Owner* would normally do so that no deterioration in the present condition and appearance of the heritage features shall take place except for reasonable wear and tear. The *Owner's* obligation to maintain the *Property* shall require that the *Owner* undertake such preventative maintenance, repair, stabilization and replacement whenever necessary to preserve the *Property* in substantially the same physical condition and state of repair as that existing on the date of this *Agreement* and to take all reasonable measures to secure and protect the *Property* from vandalism, fire and damage from inclement weather. Furthermore, the *Owner* shall take all reasonable measures to ensure that the *Property* is continuously occupied.
- 4.1.2 The *Owner* shall maintain the existing trees on the *Property* in good condition and appearance unless approval for removal is received from the *City*.
- 4.1.3 The *Owner* shall not, except as hereinafter set forth, without the prior written approval of the *City*, undertake or permit any demolition, construction, renovation, restoration, alteration, remodelling of the *Building*, or any other thing or act which

would materially affect the condition, appearance or construction of the heritage features of the *Property*.

4.2 Prohibited Activities

In addition to any other obligations set out in this *Agreement* and subject to the provisions of section 5 of this *Agreement* the *Owner* shall not in respect of the *Property*, except with the prior written approval of the *City*:

- (a) grant any easement or right of way;
- (b) erect or remove or permit the erection or removal of any building, sign, fence, or other structure of any type whatsoever except temporary fencing required during construction;
- (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 *Property*, 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, or other materials;
- (e) allow the removal, destruction or cutting of trees except as may be necessary for (i) the prevention or treatment of disease, or (ii) other good husbandry practices and only on the consent of the *City* or where the *Owner* has obtained the *City's* consent;
- (f) allow the planting of trees, shrubs or other vegetation on the *Property*; or
- (g) allow any activities, actions or uses detrimental or adverse to water conservation, erosion control or soil conservation.

4.3 Emergencies

Notwithstanding the provisions of this *Agreement*, it is understood and agreed that the *Owner* or the *City* may undertake temporary measures in respect of the *Property* so long as they are:

- (1) in keeping with the intention of this *Agreement*;
- (2) consistent with the conservation of the *Property*; and
- (3) reasonably necessary to deal with an emergency which puts the security or integrity of the *Property* or occupants of the *Building* at risk of injury or damage, provided that the Building Code Act, 1992, as amended or re-enacted from time to time, is complied with. In the event that the *Owner* is undertaking temporary measures, staff of the *City* shall be consulted. In any event, if time does not permit the *Owner* to consult with the staff of the *City* before undertaking any temporary measures, the *Owner* must notify the *City* of any temporary measures taken within two (2) business days and must make arrangements with and satisfactory to the *City* for a permanent solution, where one is required.

4.4 Signs, Structures, Etc.

The *Owner* shall not erect or permit the erection on the *Building* of any signs, awnings, television aerials or other objects of a similar nature without the prior written approval of the *City*. Such approval may, in the sole discretion of the *City* and for any reason which the *City* 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 *City* shall not be unreasonably withheld, having regard to the heritage features.

5.0 APPROVALS

5.1 Permitted and Required Alterations

5.1.1 It is understood and agreed that permits pursuant to Part IV and Part V of the *Heritage Act* have been approved in principle by Council and the OMB, respectively. These approvals anticipate alterations to the *Property* as set out more particularly in the official plan amendment and zoning by-law amendment as approved by the Ontario Municipal Board with respect to OMB File No. PL060606 (and related files) and are subject to further approvals as set out in this *Agreement* before becoming final.

5.1.2 It is further understood and agreed that the *Owner* has Council approval under the *Heritage Act* to remove and/or demolish the later addition to the *Building* and construct side verandas as more particularly set out in the resolution of Council and subject to the conditions as approved by Council on February 24, 2009.

5.2 Information to be provided as a part of the *Site plan* Approval Process

5.2.1 There is no application for *site plan* approval under s. 41 of the *Planning Act* ("*site plan*") filed at this time and it is understood and agreed that the permits under the *Heritage Act* approved in principle by Council and the OMB will not be finalized until *site plan* approval is granted. It is understood and agreed that as a part of this process and in conjunction with other matters of *site plan* approval, the design details for the *Property* and the proposed alterations must be settled and must adhere to the Official Plan and Zoning By-law provisions.

5.2.2 Prior to approval of the *site plan* a Conservation Plan shall be filed setting out recommendations, including descriptions of repairs, stabilization, and preservation activities as well as long term conservation, monitoring, and maintenance measures. A Conservation Plan under this *Agreement* necessitates that the *Owner* shall at its expense provide to the *City* such information in such detail as the *City* may reasonably require in order to consider and assess the *Owner's* request including without limitation the following:

(a) plans, specifications and designs for any proposed work;

(b) materials samples;

(c) a work schedule;

(d) the report of a qualified heritage conservation engineer, architect, archaeologist or consultant; and

(e) such other reports, studies or tests as may in the circumstances be reasonably required for the *City* to appropriately assess the impact of the proposed work on the heritage features.

5.2.3 It is understood and agreed that in conjunction with the approval of a *site plan* for the *Property* that this *Agreement* shall be amended on consent and executed by the then owner and updated to include the specific details of the alterations to the *Property* and to specify the financial and maintenance requirements associated therewith.

5.2.4 The *Owner* shall be required as a part of this process to post with the *City* sufficient securities for the works to be undertaken to the *Property*.

5.3 Conditions of Approval

The *Owner*, in undertaking or permitting the construction, alteration, remodelling, or other thing or act so approved of or deemed to be approved of by the *City*, shall comply with all of the conditions of approval specified by the *City* in its approval including the use of materials and methods specified by the *City* in its approval.

5.4 Where Owner in Default

In the event that the *Owner* is in default of any of its obligations under this *Agreement* the *City* may, in addition to other remedies set out in the *Agreement*, refuse to consider any request for approval submitted by the *Owner* whether requested before or after such notice of default has been given to the *Owner*.

5.5 Effect of Approval

Any approval given by the *City* under this *Agreement* shall have application only to the requirements of this *Agreement* and does not relieve the *Owner* from obtaining any approvals, permits or consents of any authority whether federal, provincial, municipal or otherwise that may be required by any statute, regulation, by-law, guideline or policy or by any other agreement.

6.0 INDEMNITY AND INSURANCE

6.1 Indemnity

The *Owner* shall hold the *City* and its employees, officers, agents, contractors and representatives harmless against and from any and all liabilities, suits, actions, proceedings, claims, causes, damages, judgments or costs whatsoever (including all costs of defending such claims) arising out of, incidental to, or in connection with any injury or damage to person or property of every nature and kind (including death resulting therefrom), occasioned by any act or omission of the *Owner* related to this *Agreement*.

6.2 Insurance

6.2.1 The *Owner* agrees to put in effect and maintain or cause to be put in effect and maintained, at all times as set out herein, with insurers acceptable to the *City*, the following insurance (collectively the "Insurance"):

- (a) Where possible upon commencement of construction of the development on the subject lands, Commercial General Liability ("CGL") coverage of an inclusive limit of not less than Two Million Dollars (\$2,000,000) per occurrence for Property Damage, Third-Party Bodily Injury and Personal Injury with the *City* being an additional insured and including the following policy endorsements: Cross-Liability, Waiver of Subrogation and 30 day notice of cancellation;
- (b) Property insurance to a limit commensurate to the full replacement cost value of the Building, being a minimum of \$840,000 on an "All Risks" basis (including earthquake and flood coverage where the Property is located in the designated Ontario earthquake zone) and including the following policy endorsements: Replacement Cost Value, Stated Amount Co-Insurance, Waiver of Subrogation, the *City* as an additional insured and thirty (30) days written notice of cancellation; and

- (c) Such other insurance coverage as the *City*, acting reasonably, requires from time to time in the form, amounts and for insurance risks against which a prudent *Owner* would insure, including but not limited to Builder's Risk Insurance or Wrap Up Liability Insurance.

6.2.2 Forthwith upon execution of this *Agreement* and in any event prior to the Ontario Municipal Board issuing its Order for the Official Plan and Zoning By-law amendments that pertain to this property in Case No. PL06060 (and related files) the *Owner* shall deliver to the *City* a certificate or certificates of the Insurance in a form and with limits satisfactory to the *City*, and thereafter evidence satisfactory to the *City* of the renewal of the Insurance shall be delivered to the *City* at least twenty (20) clear days before the termination thereof.

6.2.3 If the *Owner* fails to obtain the Insurance or if the Insurance is cancelled, the *City* may effect such Insurance and the premium and any other amount paid in so doing shall forthwith be paid by the *Owner* to the *City*, or if not, shall be a debt owing to the *City* and recoverable from the *Owner* by action in a court of law.

6.2.4 All proceeds receivable by the *Owner* under the Property Insurance shall, on the written demand and in accordance with the requirements of the *City*, be applied to replacement, rebuilding, restoration or repair of the *Building* to the fullest extent possible. The *Owner's* financial liability to replace, rebuild, restore or repair the *Building* if it has been damaged or destroyed shall not exceed the proceeds receivable by the *Owner* under the Property Insurance. In the event that the Property Insurance proceeds receivable by the *Owner* are insufficient to effect a partial or complete restoration of the *Building*, the *City* or the *Owner* shall have the privilege, but not the obligation, of contributing additional monies towards the replacement, rebuilding, restoration, or repair costs in order to effect a partial or complete restoration of the heritage features.

6.2.5 In the event the *Owner* allows the insurance on the *Property* to lapse and as a consequence the insurance proceeds are insufficient to cover the reasonable costs of replacing, rebuilding, restoring and replacing the *Buildings*, any deficiency to a maximum of the insured amount as contemplated by this *Agreement* shall become a debt due to the *City* and may be collected from the *Owner* in any manner permitted by law, including but not limited to a lien on the *Property*.

6.2.6 The Insurance limits or amounts of insurance specified in this *Agreement* that the *Owner* is required to put in effect may be increased by the *City* from time to time on written notice to the *Owner* and with the approval of the insurer to such limits or amounts that are prudent in the circumstances taking into account inflation, changes in the risks associated with the *Property* and industry practice.

7.0 BUILDING DEMOLITION OR REBUILDING

7.1 Notice of Damage or Destruction

In the event of any significant damage to or destruction of the *Building* the *Owner* shall notify the *City* in writing of such damage or destruction to the *Building* within three (3) clear days of such damage or destruction occurring.

7.2 Insurance Proceeds to be withheld pending Reconstruction

In the event of significant damage to or destruction of the *Building* it is agreed that the insurance proceeds will not be distributed until it is determined in accordance with the provisions of this *Agreement* which Party is undertaking the *Work*, if any. At such time as this determination is made the proceeds will be distributed to the Party responsible for construction and such distribution will be in increments such that the disbursement ensures that the *Work* is completed and insurance proceeds applied appropriately.

7.3 Rebuilding by Owner

The *Owner* shall replace, rebuild, restore or repair the *Building* to the limit of any proceeds receivable under the aforementioned insurance policy or policies on the *Property* and of any additional monies contributed by the *Owner* or the *City* towards the replacement, rebuilding, restoration or repair of the *Building* to effect a partial or complete restoration of the heritage features (in this section 7.0, the "*Work*"). Before the commencement of the *Work*, the *Owner* shall submit all plans, designs and specifications for the *Work* for its written approval within one hundred and thirty-five (135) days of the damage or destruction occurring to the *Building*. The *Owner* shall not commence or cause the *Work* to be commenced before receiving the written approval of the *City* of the plans, designs and specifications for the *Work* and the *Work* shall be performed in accordance with the approved plans, designs and specifications and upon such terms and conditions as the *City* may stipulate. The *Owner* shall cause the *Work* to be commenced within thirty (30) days of its approval by the *City* and to be completed within nine (9) months of commencement, or as soon as possible thereafter if factors beyond its control or the scope of the *Work* prevent completion within nine (9) months.

7.4 Reconstruction by City

7.4.1 In the event that the *Owner* fails to submit plans, drawings and specifications for the *Work* within the period stipulated in this *Agreement* which are acceptable to the *City* then the *City* may at its option prepare its own plans, drawings and specifications for the *Work* (herein the *City's Plans*") and shall deliver a set of the *City's Plans* to the *Owner*. The *Owner* shall have thirty (30) days from receiving the *City's Plans* to notify the *City* in writing that it intends to undertake the *Work* in accordance with *City's Plans*. If the *Owner* does not so notify the *City* within the said thirty (30) days, the *City* may (but shall not be obligated to) undertake the *Work* up to the value of any insurance proceeds receivable by the *Owner* in respect of the *Building* and of any additional amount that the *City* is prepared to contribute to effect a partial or complete restoration of the heritage features. The *Owner* shall reimburse the *City* for any expenses incurred by the *City* in undertaking the *Work*, including any professional or consulting costs reasonably incurred in connection with the *Work* to an amount not to exceed any insurance proceeds receivable by the *Owner* in respect of the damage to or destruction of the *Building*.

7.4.2 The *Owner* grants to the *City* the right and licence to enter and occupy the *Property* and the *Building* or such part or parts thereof that the *City* acting reasonably considers necessary or convenient for the *City* and its forces to undertake and complete the *Work* (herein the "*Licence*"). The *Licence* shall be exercisable by the *City* on the commencement of any *Work* undertaken by the *City* and shall terminate when such *Work* has been completed.

7.4.3 In the event that the *City* does not submit to the *Owner* the *City's Plans* or does not proceed with the *Work* within one hundred and eighty (180) days after it becomes so entitled, except where it is prevented from so doing by any act or omission of the *Owner* or any tenant or agent of the *Owner*, or by any other factors beyond its control, the *City's* right to undertake the *Work* shall automatically terminate and the *Owner* shall be entitled to retain any insurance proceeds in respect of the damage to or destruction of the *Building*.

8.0 **REMEDIES OF CITY**

8.1 Letter of Credit

8.1.1 The *Owner* will prior to the registration of this *Agreement*, in order to secure its obligations hereunder, provide the *City* with security in the form of an irrevocable Letter of Credit in the amount of \$100,000. If the *City* is of the opinion, reasonably held, that the *Owner* has failed to perform any of its obligations set

out in this *Agreement*, in addition to any of its other legal or equitable remedies, the *City* may serve on the *Owner* a notice setting out particulars of the breach and of the *City'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 *City* for remedying the breach or the *City* may draw on the Letter of Credit to the amount of the actual cost of remedying the breach and may enter upon the *Property* and complete the *Owner's* obligations. Any expenses reasonably incurred by the *City* in completing the obligations of the *Owner* pursuant to this *Agreement*, over and above the Letter of Credit provided hereunder shall, until paid to it by the *Owner*, be a debt owed by the *Owner* to the *City* and recoverable by the *City*. In the event the *City* is required to draw on the Letter of Credit, the *Owner* will provide a replacement Letter of Credit within ten (10) days of demand.

- 8.12. The Letter of Credit shall be returned to the *Owner* once the restoration work has been completed in accordance with the Conservation Plan and the condominium corporation has taken title to the property. It is understood that the *City* may require as a condition of condominium approval that the condominium corporation assume a financial obligation for maintenance of the *Property*.

8.2 Notice of Default

If the *City*, in its sole discretion, is of the opinion that the *Owner* has neglected or refused to perform any of its duties or obligations set out in this *Agreement*, the *City* may, in addition to any of its other legal or equitable remedies, give the *Owner* written notice setting out particulars of the *Owner's* default and the actions required to remedy the default. The *Owner* shall have thirty (30) days from receipt of such notice to remedy the default in the manner specified by the *City* or to make other arrangements satisfactory to the *City* for remedying the default within such period of time as the *City* may specify.

8.3 City May Rectify Default

If the *Owner* has not remedied the default or made other arrangements satisfactory to the *City* for remedying the default within the time specified in this *Agreement*, or if the *Owner* does not carry out the arrangements to remedy the default within the period of time specified by this *Agreement*, the *City* may enter upon the *Property* and may carry out the *Owner's* obligations and the *Owner* shall reimburse the *City* for any expenses incurred thereby. Such expenses incurred by the *City* shall, until paid to it by the *Owner*, be a debt owed by the *Owner* to the *City* and recoverable by the *City* by any legal remedies available. The provisions of this *Agreement* shall apply with all necessary changes required by the context to any entry by the *City* onto the *Property* to remedy the default.

8.4 Other Remedies

- 8.4.1. In addition and without limiting the scope of the other enforcement rights available to the *City* under this *Agreement*, the *City* may bring an action or an application for injunctive relief to prohibit or prevent the *Owner's* default or the continuance of the *Owner's* default under this *Agreement*.

9.0 NOTICE

9.1 Addresses of the Parties

- 9.1.1 Any notices to be given under this *Agreement* shall be in writing and be delivered by personal delivery or by facsimile transmission to the parties as follows:

THE OWNER

c/o The Residences of Heritage Hill
10384 Islington Ave
Kleinburg, Ontario
L0J 1C0

Attention: Frank Greco

THE CITY

City of Vaughan
2141 Major Mackenzie Drive
Vaughan, ON
L6A 1T1

Attention: City Clerk

- 9.1.2 Notice shall be deemed to have been received on the date of personal delivery or facsimile transmission if such date is a business day and delivery is made prior to 4:00 p.m. (Toronto time) and otherwise on the next business day. The parties agree to notify each other immediately, in writing, of any changes of address from those set out above.

10.0 Inspection of the Property by the City

- 10.1 The City or its representatives shall be permitted at all reasonable times to enter upon and inspect the Property upon prior written notice to the Owner of at least twenty-four (24) hours, or as otherwise permitted pursuant to the *Heritage Act*.

11.0 Notice of Easement

11.1 Plaque

- 11.1.1 The Owner shall erect a plaque on the Building, in a tasteful manner, indicating that the Property is a designated Heritage Property pursuant to the *Heritage Act* and subject to a Heritage Conservation Easement Agreement.

11.2 Publication

- 11.2.1 The Owner agrees to allow the City to publicize the existence of the heritage designation of the Property and this Agreement.

12.0 GENERAL

12.1 Waiver

- 12.1.1 The failure of the City 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 City 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. Any waiver must be in writing and signed by the City.

12.2 Extension of Time

- 12.2.1 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 the City, 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. Any extension must be in writing and signed by the City.

12.3 Severability of Covenants

12.3.1 All covenants, easements and restrictions contained in this *Agreement* shall be severable, and should any covenant, easement or restriction in this *Agreement* be declared invalid or unenforceable, the validity and enforceability of the remaining covenants, easements and restrictions shall not be affected.

12.4 Entirety

12.4.1 This *Agreement* embodies the entire agreement of the parties with regard to the matters dealt with herein, and no understandings or agreements, verbal, collateral or otherwise, exist between the parties except as herein expressly set out.

12.5 Agreement to Run with the Property: Subsequent Instruments

12.5.1 This *Agreement* shall be registered on title to the *Property* by the *Owner*, at its expense, and the covenants, easements and restrictions set out herein shall run with the *Property* and enure to the benefit of and be binding upon the parties hereto and their heirs, executors, administrators, personal representatives, successors and assigns, as the case may be.

12.5.2 In the event that the *Owner* transfers the *Property*, the *Owner* shall obtain from the purchaser an Assumption Agreement whereby the purchaser of the *Property* agrees to assume the obligations of the *Owner* pursuant to this *Agreement*. Upon delivery of an executed Assumption Agreement in the form and content described herein the *Owner* named herein shall be released from any further obligations and liability and such purchaser shall be deemed to be the party hereinbefore originally named as the *Owner*. The Assumption Agreement shall be registered on title to the *Property* at the *Owner's* expense and a copy shall be delivered forthwith upon execution to the *City*.

12.5.3 The *Owner* shall immediately notify the *City* in the event that it transfers either the fee simple title to or its possessory interest in the whole or any part of the *Property* or the *Building*, provided that such notice shall not be required where the *Owner*, in leasing and licensing premises in the *Building*, retains responsibility for the alteration of any heritage features forming part of the licensed or leased premises, and the tenant or licensee has no authority to alter such heritage features.

12.5.4 If the lands comprising the *Property* are included within a condominium description plan registered under the provisions of the *Condominium Act*, 1998, (the "*Condominium Lands*") then it shall be a condition of Condominium Approval, shall be included in a Condominium Agreement with the *City* and shall be included in the Condominium Declaration that the Condominium Corporation agrees to assume and be bound by the covenants, indemnities, agreements and obligations of the *Owner* hereunder, including providing the insurance and Letter of Credit as required pursuant to sections 6.1 and 8.1 of said agreement respectively, save and except for any which have already been completed, and whereby the Condominium Corporation shall be entitled to the rights of the *Owner* hereunder in place and stead of the *Owner*, as if it were an original party hereto.

Upon the inclusion of the covenants, indemnities, agreements and obligations herein in the Condominium Declaration, the *Owner* shall have no further responsibility for the covenants, indemnities, agreements and obligations under this *Agreement*.

12.5.5 So long as a condominium exists and the Condominium Corporation with respect to such condominium has complied with the provisions in Section 12.5.4, then no unit owner of a unit within such condominium will be required to deliver a covenant pursuant to this Article.

12.6 Priority and Postponement

12.6.1 The *Owner* agrees to provide to the *City*, prior to the registration of this *Agreement* on title to the *Subject Property* and at no cost to the *City*, any postponements which the *City Solicitor* considers necessary to ensure that this *Agreement*, when registered, shall have priority over any other interest in the *Subject Property*. It is agreed that the *City* does not require postponement in favour of any of the interests registered on title as set out in Schedule D hereof, but should there be any intent to register on title any interest subsequent to those found in Schedule D the *City* shall be advised thereof prior thereto and at the *City's* discretion it may require an acknowledgement that any such interest shall not have priority over this Heritage Conservation Easement Agreement.

12.6.2 The *Owner* agrees that it will provide to the *City*, concurrent with the delivery of any postponements that may be necessary pursuant to paragraph 12.6.1, a solicitor's title opinion, satisfactory to the *City Solicitor*, confirming that this *Agreement*, when registered, will have priority over any other interest in the *Subject Property*, except as set out in paragraph 12.6.1 and any other interest that may be acceptable to the *City*.

12.7 Gender, Number and Joint and Several

12.7.1 Words importing the masculine gender include the feminine or neutral gender and words in the singular include the plural, and *vice versa*. Whenever the *Owner* comprises more than one person, the *Owner's* obligations in this Agreement shall be joint and several.

IN WITNESS WHEREOF the parties hereto have executed this Agreement effective as of the date first written above.

IN WITNESS WHEREOF the parties hereto have hereunto set their hands and seals

THE CORPORATION OF THE CITY OF
VAUGHAN

Per: 

City Clerk, Jeffrey A. Abrams

I have authority to bind the corporation

GIOSEFFINA (JOSIE) GRECO ALVIANI


Name:

FABIO ALVIANI


Name:


Witness


Witness

SCHEDULE "A"
DESCRIPTION OF THE PROPERTY MUNICIPALLY KNOWN AS
10384 ISLINGTON AVENUE, CITY OF VAUGHAN

PT LT 23 CON 8 PTS 2 & 3 65R-30390, Vaughan

SCHEDULE B
STATEMENT OF CULTURAL HERITAGE VALUE

DESCRIPTION OF HISTORIC PLACE:

The Martin Smith House, 10384 Islington Avenue, Lot 23, Concession 8

STATEMENT OF PROVINCIAL SIGNIFICANCE: n/a (for use only the OHT)

HERITAGE VALUE:

Historic Value:

The Martin Smith House at 10384 Islington Avenue, also known as "Redcroft" is a vernacular Gothic Revival style structure built in 1852. The structure has considerable local significance to the community of Kleinburg and to the City of Vaughan. The house is located on lands originally owned by Martin Smith, an early pioneer of the Kleinburg area. Martin Smith received ownership of the entire 200-acres property (the entire lot 23, concession 8 parcel) from his father-in-law John Line who deeded the property to him and his daughter Catherine Smith in his Will after his death. The original 200-acres originally included lands which now are the McMichael gallery across the street and was used for farming by the Smith family.

Martin and Catherine Smith constructed the house on their property in 1852 for their family which consisted of seventeen children, of which only three survived past childhood. Local history identifies that the bricks used to build the house were made on the property at its time of construction.

The Smiths' were one of the earliest settlers in Kleinburg at the time of growth for the village when the local grist and sawmill were established and layout of the village was first being established.

Architectural Value:

Exterior

The Martin Smith House is a one-and-half storey building constructed of brick in the vernacular Gothic Revival style. Is one of the best examples in Vaughan of this style with decorative design details found at its entranceway, brickwork, and verandah and posts. The Gothic Revival style is characterized by its centrally located gable along the façade's roofline. A narrow rectangular window is located within this gable as a typical feature of the style.

T-Plan Construction and Foundation

The house is built in a T-shape plan with rear and side additions to this original plan built in brick and wood. These additions were built at a later time in the house's history and are not considered significant. A Heritage Permit has been approved to demolish these later additions to the buildings. The back of the house holds the tail of the T-shaped plan. The foundation of the building is of stone and the structure sits on a full basement.

Entranceway, Coloured Glass, Transom, Sidelights

The building has a centrally located entranceway which is flanked by two large windows. A bell-cast verandah with decorative posts is fitted across the front façade of the building. The façade or east elevation of the house has a centrally located entranceway crowned with a semi-elliptical transom above the entranceway. The transom or fanlight has a swaged mullions pattern. Coloured glass is found within this transom. The decorative design is carried downwards to the sidelights on either side of the entranceway. The sidelights are uniquely fitted with ogee shaped arches and are paned with coloured glass of red, white and blue. An elliptical shaped brick voussour surrounds the transom above the single-paneled door.

Windows and Brick Voussours

The entranceway is flanked by two windows: one to either side. These windows are double-hung six-over-six pane windows sitting on wood sills. Decorative brick voussours with a chevron design heads each façade window. The windows have louvered shutters attached to each. Four

similar windows are found on the south and north (side) elevations of the main rectangular portion of the house: two on the second and two found on the first floor of the house.

Verandah, Treillage

A bell-cast verandah covers the façade of the house. The verandah is supported by four decorative treillage posts which are comprised of multiple wooden sections of gothic lancet apertures, tracery and a quatrefoil pattern on each post. Each post is crowned with curvilinear decorative brackets.

Fascia and Cornice Moulding

Moulding trims the centre gable and extends to the returned eaves on both side elevations and the back tail gable end. Soffits are clad in plain boards as are fascias except at the front which has fine single moulding. Simple cornice moulding is found along entire roofline of house.

Buff Brick Quoining

Buff Brick quoins are found on all four corners of the front main portion of the building.

Interior

Staircase, Mantels, Floorboards, Baseboards, Doors and Door Surrounds, Hardware, Grills, Stained Glass

The interior of the house has a centrally located staircase which is likely original to the house. A mantel found on the first floor parlour, the baseboards, door surrounds, floorboards, doors and door hardware and vent grills including original stain glass at the entranceway – are all interior features that have considerable architectural significance and their preservation are warranted. Preservation of the interior would be subject to the requirements of paragraph 2.1.2 of the HCEA.

Contextual Value:

The Martin Smith House is situated on the west side of Islington Avenue and sits on an elevated knoll as you enter the Kleinburg historic village core when travelling north on Islington Avenue. It is one of the first heritage buildings entering the core area and acts as an important gateway to the Kleinburg Heritage Conservation District.

Heritage Character Defining Features (Heritage Features):

The Heritage Features of the Property referred to in the Easement Agreement are comprised of the following elements:

Exterior:

- Gothic Revival style which is the one-and-one half storey brick structure with a centrally located gable.
- T-shaped plan
- Brickwork including buff brick quoining
- Entranceway including transom, sidelights and paneling, all coloured glass and windows and mullions, door, hardware, door surround.
- Verandah including treillage, brackets, bell-cast roof
- Windows, shutters, wood sills, brick voussour pattern over all windows.
- Cornice moulding at eaves
- Stone foundation

Contextual:

- Original location of house



Martin Smith House ca. 2005, Front façade, East Elevation



Martin Smith House ca. 2005, Front Façade, East Elevation



Bell-Cast Veranda Framing
November 2008



Verandah and treillage detailing, 2005



*Brick Buff Coloured Quailing, Cornice Moulding,
November 2008*



*North Tail elevation, November 2008
Demolition of this side lean-to on the original tail of the
house has been approved.*



*South Tail Elevation, November 2008
Demolition of this south addition which has
been added to the original tail of the building
has been approved.*



*Back, West Elevation , November 2008
Demolition of this rear addition which is attached to the
original tail has been approved*

SCHEDULE "C"
STANDARDS AND GUIDELINES FOR THE CONSERVATION OF HISTORIC PLACES IN
CANADA

Definitions of the terms in *italics* can be found in the Introduction to the Standards and Guidelines.¹ The Standards are not presented in a sequential or hierarchical order, and as such, equal consideration should be given to each. All standards for any given type of treatment must therefore be applied simultaneously to a project.

General Standards (all projects)

1. Conserve the *heritage value* of a historic place. Do not remove, replace, or substantially alter its intact or repairable *character-defining elements*. Do not move a part of a *historic place* if its current location is a *character-defining element*.
2. Conserve changes to a *historic place* which, over time, have become *character-defining elements* in their own right.
3. Conserve *heritage value* by adopting an approach calling for *minimal intervention*.
4. Recognize each *historic place* as a physical record of its time, place and use. Do not create a false sense of historical development by adding elements from other *historic places* or other properties or by combining features of the same property that never coexisted.
5. Find a use for a *historic place* that requires minimal or no change to its *character-defining elements*.
6. Protect and, if necessary, stabilize a *historic place* until any subsequent *intervention* is under-taken. Protect and preserve archaeological resources in place. Where there is potential for disturbance of archaeological resources, take mitigation measures to limit damage and loss of information.
7. Evaluate the existing condition of character-defining elements to determine the appropriate intervention needed. Use the gentlest means possible for any intervention. Respect heritage value when undertaking an intervention.
8. Maintain *character-defining elements* on an ongoing basis. Repair *character-defining elements* by reinforcing their materials using recognized conservation methods. Replace in kind any extensively deteriorated or missing parts of *character-defining elements*, where there are surviving prototypes.
9. Make any *intervention* needed to preserve *character-defining elements* physically and visually compatible with the *historic place*, and identifiable upon close inspection. Document any intervention for future reference.

Additional Standards Relating to Rehabilitation

1. Repair rather than replace *character-defining elements*. Where *character-defining elements* are too severely deteriorated to repair, and where sufficient physical evidence exists, replace them with new elements that match the forms, materials and detailing of sound versions of the same elements. Where there is insufficient physical evidence, make the form, material and detailing of the new elements compatible with the character of the *historic place*.
2. Conserve the *heritage value* and *character-defining elements* when creating any new additions to a historic place or any related new construction. Make the new work physically and visually compatible with, subordinate to and distinguishable from the historic place.
3. Create any new additions or related new construction so that the essential form and integrity of a *historic place* will not be impaired if the new work is removed in the future.

¹ Note: as of the date of this Agreement the complete Parks Canada "Standards and Guidelines for the Conservation of Historic Places in Canada" may be accessed at: http://www.pc.gc.ca/docs/pc/guide/nldclpc-sgchpc/index_e.asp. **Additional Standards Relating to Restoration**

SCHEDULE "D"
TITLE INFORMATION

Charge/Mortgage of Land registered March 29, 2007 as Instrument No. YR965288 between Gioseffina Greco-Alviani and Fabio Alviani and the Royal Bank of Canada. Securing the principal sum of \$731,250.00.



Ontario ServiceOntario

PARCEL REGISTER (ABBREVIATED) FOR PROPERTY IDENTIFIER

LAND
REGISTRY
OFFICE #65

03323-0417 (LT)

PAGE 1 OF 1
PREPARED FOR LMCINCYT
ON 2010/02/19 AT 12:14:15

PROPERTY DESCRIPTION: PT LT 23 CON 8 PT 3 65R22136, VAUGHAN

PROPERTY REMARKS:
ESTATE/QUALIFIER:
FEE SIMPLE
LT CONVERSION QUALIFIED
OWNERS' NAMES
ALVIANI, FABIO
GRECO-ALVIANI, GIOSEFFINA
JTEN
JTEN
RECENTLY:
DIVISION FROM 03323-0287
CAPACITY SHARE
JTEN
JTEN

FIN CREATION DATE:
2001/01/19

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
** PRINTOUT INCLUDES ALL DOCUMENT TYPES (DELETED INSTRUMENTS NOT INCLUDED) **						
**SUBJECT.	ON FIRST REGISTRATION UNDER THE LAND TITLES ACT, TO:					
**	SUBSECTION 44(1) OF THE LAND TITLES ACT, EXCEPT PARAGRAPH 11, PARAGRAPH 14, PROVINCIAL SUCCESSION DUTIES *					
**	AND ESCHEATS OR FORFEITURE TO THE CROWN.					
**	THE RIGHTS OF ANY PERSON WHO WOULD, BUT FOR THE LAND TITLES ACT, BE ENTITLED TO THE LAND OR ANY PART OF					
**	IT THROUGH LENGTH OF ADVERSE POSSESSION, PRESCRIPTION, MISDESCRIPTION OR BOUNDARIES SETTLED BY					
**	CONVENTION.					
**	ANY LEASE TO WHICH THE SUBSECTION 70(2) OF THE REGISTRY ACT APPLIES.					
**DATE OF CONVERSION TO	LAND TITLES: 1999/05/25 **					
65R22136	2000/01/06	PLAN REFERENCE				C
LT1500355	2000/07/12	BYLAW				C
REMARKS: AS TO PT LT 23 CON 8, PT 3 65R22136.						
YR965287	2007/03/29	TRANS PERSONAL REP	\$975,000	DAMSON, HUGH SHAW	ALVIANI, FABIO GRECO-ALVIANI, GIOSEFFINA	C
REMARKS: PLANNING ACT STATEMENTS						
YR965288	2007/03/29	CHARGE	\$731,250	GRECO-ALVIANI, GIOSEFFINA ALVIANI, FABIO	ROYAL BANK OF CANADA	C
65R30390	2007/10/25	PLAN REFERENCE				C
YR1442866	2010/02/19	NOTICE	\$2	GRECO-ALVIANI, GIOSEFFINA ALVIANI, FABIO		C

NOTE: ADJOINING PROPERTIES SHOULD BE INVESTIGATED TO ASCERTAIN DESCRIPTIVE INCONSISTENCIES, IF ANY, WITH DESCRIPTION REPRESENTED FOR THIS PROPERTY.
NOTE: ENSURE THAT YOUR PRINTOUT STATES THE TOTAL NUMBER OF PAGES AND THAT YOU HAVE PICKED THEM ALL UP.