

EASEMENT ENCROACHMENT AGREEMENT

THIS AGREEMENT made the [REDACTED] day of [REDACTED], 20[REDACTED] (the "Agreement").

BETWEEN:

[REDACTED]
(the "Owner(s)")

PARTY OF THE FIRST PART

- and -

THE CORPORATION OF THE TOWN OF CALEDON
(the "Town")

PARTY OF THE SECOND PART

WHEREAS the Owners are the registered owners of the lands legally described as [REDACTED] and municipally known as [REDACTED] (the "Subject Lands");

AND WHEREAS Instrument No. [REDACTED], attached hereto as Schedule "A", is an easement (the "Naturalization Easement") registered on [REDACTED] in favour of the Town over a portion of the Subject Lands designated as [REDACTED] (the "Easement Lands");

AND WHEREAS pursuant to the Naturalization Easement, the Owners have agreed, among other things, not to place or cause or permit the placement of any fill, buildings or structures on the Easement Lands;

AND WHEREAS the Town has revised the structure envelope maps contained in the Town's Comprehensive Zoning By-law 2005-60, as amended, (the "Zoning By-law"), to more accurately identify: actual structure envelopes, natural area limits, boundaries and dimensions;

AND WHEREAS the Easement Lands as set out in the Naturalization Easement do not align with the Town's revised structure envelope map, [REDACTED], as updated and amended from time (the "Revised Structure Envelope"), contained in the Zoning By-law and attached hereto as Schedule "B", in that the Revised Structure Envelope overlaps with the Easement Lands;

AND WHEREAS the Owner warrants that all buildings and structures, driveways, parking areas, swimming pools and septic tile fields are located within the Revised Structure Envelope;

AND WHEREAS the Town hereby agrees to permit the [REDACTED] [REDACTED] encroaching on the Easement Lands which are also located within the Revised Structure Envelope (the "Encroaching Features");

NOW THEREFORE THIS AGREEMENT WITNESSETH that, in consideration of the covenants hereinafter contained and the sum of Two Dollars (\$2.00) now paid by the Owner to the Town (the receipt and sufficiency of which is hereby acknowledged), the parties hereto hereby covenant and agree as follows:

RECITALS

1. The foregoing recitals are true and accurate, and the terms defined therein shall bear the meanings indicated throughout this Agreement.

ENCROACHMENT

2. Notwithstanding the terms of the Naturalization Easement, and subject to the Zoning By-law and Revised Structure Envelope, the Town hereby agrees to permit the Encroaching Features on the Easement Lands subject to the provisions of this Agreement.
3. As set out in the Naturalization Easement, the Town shall continue to have access to the Easement Lands at all times by its agents, contractors and employees, and its or their vehicles, equipment and supplies for the purpose of inspecting, maintaining, altering, planting and replacing trees and for every such purpose incidental to the exercise of these rights.
4. The Town shall endeavor to restore the Encroaching Features to their original condition insofar as reasonably possible after any inspection or maintenance work which affects the Encroaching Features is completed on the Easement Lands, but shall not be held liable for any damage that may occur to the Encroaching Features through the exercise of any of its Naturalization Easement rights. [NTD: include this paragraph in the event that the original easement contains remediation language]

REMEDIES

5. The rights and remedies provided for in this Agreement are in addition to and shall not limit the ability of the Town to take such actions as may be available to it to ensure compliance with the requirements of this Agreement.

INDEPENDENT LEGAL ADVICE

6. The Owners acknowledge that, prior to executing this Agreement, they have obtained or have had a reasonable opportunity to obtain, independent legal advice with respect to this Agreement and the covenants and restrictions set out herein.

NOTICES

7. All notices given under the terms of this Agreement may be delivered in person or by courier, e-mail, or mail, and, if mailed, shall be deemed to be validly given at 9:00 a.m. in the morning of the third day, not being a Saturday or Sunday, following the day upon which the notice was posted by pre-paid registered mail, addressed, if to the Owners, to XXXX, email: XXXX and if to the Town, to the General Manager, Community Services of The Corporation of the Town of Caledon, 6311 Old Church Road, Caledon, Ontario, L7C 1J6.

BUSINESS AGREEMENT

8. This Agreement is made for business purposes and is a "business agreement" as defined under the Limitations Act, 2002, S.O. 2002, c. 24, as amended from time to time (the "Limitations Act, 2002"). Further, no limitation periods set out in the Limitations Act, 2002,

other than the ultimate limitation period set out in section 15 of the Limitations Act, 2002, shall apply to this Agreement and to the obligations imposed herein.

REGISTRATION

9. The Town shall be entitled to register this Agreement upon the title to the Subject Lands at the Owners' expense and the Owners shall execute any document that may be required to allow such registration.

AUTHORITY

10. The Owners shall not object to or contest the jurisdiction, authority or right of the Town to enter into this Agreement or to enforce any provision of this Agreement.

COUNCIL DISCRETION

11. Notwithstanding any other provision of this Agreement, the Owners acknowledge and agree that none of the provisions of this Agreement is intended to operate, nor shall have the effect of operating, in any way to fetter the council of the Town in the exercise of any of its discretionary powers. The Owners hereby acknowledge and agree that they do not expect and shall not receive any advantageous planning or other consideration by virtue of them having entered into this Agreement or by virtue of the existence of this Agreement.

SEVERABILITY

12. The invalidity of any provision of this Agreement shall not affect any other provision of it, and, if any particular provision of this Agreement is declared to be invalid by a court or tribunal of competent jurisdiction, this Agreement shall be construed as if the invalid provision had been omitted.

GOVERNING LAW

13. This Agreement shall be governed by and construed in accordance with the laws of Canada and the Province of Ontario.

HEADINGS

14. The headings and paragraph numbers in this Agreement shall be deemed to be inserted for convenience of reference only and shall not affect the construction or interpretation of this Agreement.

GENDER AND NUMBER

15. This Agreement shall be read with such changes in gender and number as the context may require.

COVENANTS

16. The covenants, agreements, conditions and undertakings contained in this Agreement on the part of the Owners shall run with the Subject Lands and shall be binding upon them and upon the Owners' heirs, administrators, successors and assigns.

COUNTERPARTS

17. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which taken together shall be deemed to constitute one and the same instrument. Counterparts may be executed either in original or electronic form and the parties adopt any signatures received electronically as original signatures of the parties.

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

[FOR INDIVIDUAL]

Witness:

XXXX

XXXX

Name:

Position:

Name:

Position:

I/We have authority to bind the corporation.

**THE CORPORATION OF THE TOWN OF
CALEDON**

**AUTHORIZATION RESOLUTION/BY-LAW
NUMBER BL-20 - ,**

Passed by the Town of Caledon

Council on the th day of , 20

XXXX, Manager of Development Review
Services

I have authority to bind the municipal
corporation.

Schedule "A" – Naturalization Easement

[insert the easement as received from Legal Services]

DRAFT

Schedule "B" – Revised Structure Envelope

[insert a copy of the revised structure envelope map with dimensions]

DRAFT