

ENCROACHMENT AGREEMENT

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

BETWEEN:

[REDACTED]
(the "Owner")

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 the Town is the registered owner of the lands legally described as [REDACTED] (the "Town's Lands");

AND WHEREAS the Town of Caledon By-law No. 2022-027 known as the Encroachment By-law came into full force and effect on June 1, 2022 (the "Encroachment By-law");

AND WHEREAS the Encroachment By-law permits minor encroachments on an adjacent boulevard directly abutting the Subject Lands;

AND WHEREAS the Encroachment By-law requires an encroachment permit for certain encroachments on the Town's Lands;

AND WHEREAS the Town's Director, Engineering Services or the Director, Operations, acting either individually or together (the "Director"), may require an encroachment agreement be executed between the Owner and the Town prior to an encroachment permit being issued;

AND WHEREAS the Town hereby agrees to permit the [NTD: insert encroaching features] encroaching on the Town's Lands (the "Encroaching Features") as shown on the sketch attached hereto as Schedule "A";

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 Section 3.1 of the Encroachment By-law, the Town hereby agrees to permit the Encroaching Features on the Town's Lands subject to the provisions of this Agreement.
3. Consistent with the Encroachment By-law, the Owner shall not erect, plant, place or continue, or cause to be erected, planted placed or continued an encroachment:
 - a. that is sharp or dangerous in any way, or which may cause damage or injury to a person or thing;
 - b. that obstructs the visibility of motorists or pedestrians, traffic sightlines or which obstructs or detracts from the visibility or effectiveness of any traffic sign or control device;
 - c. that inhibits or obstructs Town operations including but not limited to snow ploughing, maintenance of Town trees or the repair and maintenance of Town infrastructure;
 - d. that inhibits or obstructs access to fire hydrants, post office boxes, or any installations belonging to the Town, Regional Municipality of Peel (the "Region") or utility provider; or
 - e. in a ditch, swale or any other Town infrastructure which is designed or exists for the purpose of storing or carrying storm water.
4. The Town shall continue to have access to the Town's Lands at all times by its agents, contractors and employees, and its or their vehicles, equipment and supplies for any and all purposes.
5. The Director may at any time remove the Encroachment Features located on a boulevard without compensation, restoration or replacement.

REMEDIES

6. 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.

INDEMNITY

7. Save and except for any actions, causes of action, suits, liens, claims, demands or costs arising out of any fault or neglect of the Town, the Owner shall indemnify the Town against all actions, causes of action, suits, liens, claims, demands and costs whatsoever which may arise either directly or indirectly as a result of the construction, installation or existence of the Encroachment Features.

INSURANCE

8. Upon execution of this Agreement by the Owner and prior to commencing the construction or installation of the Encroachment Features, the Owner shall file a certificate of its general liability insurance policy, in the form provided by the Town and with an insurer satisfactory

to the Town, with respect to construction or installation of the Encroachment Features in the minimum amount of Two Million Dollars (\$2,000,000.00) inclusive per occurrence for bodily injury, death and damage to property including loss of use thereof for any one occurrence (the "Insurance Policy"). The Insurance Policy shall include the Town as an additional insured.

9. The Owner shall keep the Insurance Policy in full force and effect during the term of this agreement and shall provide evidence of such insurance on the insurance renewal date.
10. If the Owner fails or neglects to keep the Insurance Policy in full force and effect as required by this Agreement the Town shall be entitled to draw upon securities the Owner has provided under the application for an encroachment permit and to use the proceeds thereof to obtain a replacement insurance policy or policies.

TERMINATION

11. Either Party may provide notice of their intention to terminate this agreement on 60 (sixty) days' notice. Upon the giving or receipt of such notice to terminate the Owner shall restore the Town's Lands to the condition they were in before the placement of the Encroaching Features.
12. In the event that the Owner does not restore the Town's Lands to the condition they were in before the placement of the Encroaching Features, the Town may engage contractors or direct Town staff to complete the restoration, and the Owner shall be responsible to pay all costs incurred by the Town.
13. The Town may inspect the Town's Lands in the area of the Encroaching Features and, if satisfied that all appropriate restoration works have been completed, shall provide notice to the Owner containing the date that this agreement shall be terminated.

INDEPENDENT LEGAL ADVICE

14. The Owner acknowledges 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.

FEES

15. Upon execution of this Agreement, the Owner shall pay to the Town the fee for preparing the Agreement pursuant to the Town's Fees By-law in the amount of **TWO THOUSAND THREE HUNDRED AND FOUR DOLLARS (\$2,304.28)**, including costs relating to searches performed, registration and HST.

NOTICES

16. 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 Director, Engineering Services or the Director,

Operations, of The Corporation of the Town of Caledon, 6311 Old Church Road, Caledon, Ontario, L7C 1J6.

BUSINESS AGREEMENT

17. 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

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

AUTHORITY

19. The Owner 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

20. Notwithstanding any other provision of this Agreement, the Owner acknowledges and agrees 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 Owner hereby acknowledges and agrees 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

21. 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

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

HEADINGS

23. 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

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

COVENANTS

25. This Agreement shall not be assigned by the Owner to any third party without the prior written consent of the Town, which consent may be unreasonably withheld. For clarity, in the event that the Owner sells the Subject Lands to which the Encroachment Features are appurtenant, the Owner shall instruct the purchaser of the said Subject Lands to submit a new application for an encroachment permit to the Town for the Town's review and approval.
26. 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, where permitted, assigns.

COUNTERPARTS

27. 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

[FOR CORPORATION]

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, Director of Engineering Services or
Operations

I have authority to bind the municipal
corporation.

DRAFT

Schedule “A” – ENCROACHMENT FEATURES

[insert sketch of encroachment if required]

DRAFT