

Schedule A to By-law Number 42-2013

ENCROACHMENT AGREEMENT

BETWEEN:

THE REGIONAL MUNICIPALITY OF
PEEL
(hereinafter called "the Region")

OF THE FIRST PART

-AND-

THE CORPORATION OF THE TOWN
OF CALEDON
(hereinafter called "the Owner")

OF THE SECOND PART

WHEREAS the Owner is the registered owner of the lands on the west side of Queen Street North in the Town of Caledon, being legally described on Schedule "A" attached hereto (hereinafter referred to as the "Owner's Lands");

AND WHEREAS the Owner has requested the Region to permit a portion of the Humber River Heritage Park, consisting of patterned concrete paving, flagstone path with concrete curbs, a park sign, planting beds with river stone edging, armour stone wall and a portion of a pavilion (hereinafter referred to as the "Encroachment") to encroach upon the widened limits of Queen Street North / Highway #50 (Regional Road 50) on drawing number L-1A prepared by ABCOM and retained in file ENC-13017.00 with the Region (hereinafter referred to as the "Region Road");

NOW WITNESSETH that in consideration of the mutual covenants and agreements hereinafter set out, the parties agree as follows:

1. The recitals herein are true and accurate.
2. Subject to the provisions hereinafter set out, the Region permits the Owner to have the Encroachment remain in perpetuity (hereinafter referred to as the "Term").
3. The Owner agrees to pay the Region the following:

(a)	Administration fee (one time)	NIL
(b)	Registration fee (Registry Office)	NIL
(c)	Annual fee (each year throughout Term)	NIL
4. This Agreement may be terminated at any time by either party upon sixty (60) days written notice to the other party. The Owner agrees to remove the Encroachment at the Owner's sole expense within sixty (60) days of any such notice of termination. The Owner shall restore the area previously occupied by the Encroachment in a manner satisfactory to the Region, acting reasonably. The Owner agrees not to make any claims, demands, and/or commence any actions, suits, proceedings or maintain the same for any and all costs, damages, losses, compensations, injurious affection arising from the Encroachment or as a result of the early termination of this Agreement.

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5. At the end of the Term, the Owner shall, at their sole cost and expense, remove the Encroachment and restore the area previously occupied by the Encroachment in a manner satisfactory to the Region, acting reasonably. The Owner agrees not to make any claims, demands, and/or commence any actions, suits, proceedings or maintain the same for any and all costs, damages, losses, compensations, injurious affection arising from the Encroachment or as a result of the termination of this Agreement.
6. The Owner agrees and covenants that it will bear all costs associated with the Encroachment. The Owner agrees and covenants that the Encroachment is now in a good and workmanlike condition and in compliance with all municipal by-laws and the laws of the Province of Ontario and shall be maintained in a good and workmanlike condition throughout the Term of this Agreement.
7. The Owner agrees not to hold the Region responsible in any way for any loss, accident, or damage or injury to person or persons on the Region Road resulting from the Encroachment. The Region shall not in any event whatsoever be liable or responsible in any way for any kind of liability, suit, claim, demand, fine, action, or proceeding of any kind for which the Owner, or those for whom they are in law responsible, may become liable or suffer by reason of the Encroachment, including any breach of or non-performance by the Owner of any provision of this Agreement, saving and excepting therefrom the sole gross negligence by the Region, or those for whom it is in law responsible. The Owner agrees to indemnify and save harmless the Region of and from all liabilities, fines, damages, suits, claims, demands, actions, and cost for such actions for which the Region may become liable or suffer by reason of the Encroachment, its use and or removal. Without restricting the generality of the foregoing, the Owner shall indemnify and save harmless the Region of and from all damages to persons or properties as a result of such Encroachment and its use and/or removal. This provision shall apply and survive the termination of this Agreement with respect to any act or omission that occurred during the Term of this Agreement.
8. The Owner agrees that there shall not be any addition, vertically, horizontally or otherwise, to the Encroachment. In the event that the Encroachment is being added to or materially altered, it will be relocated within the Owner's Lands. Upon such removal or relocation, this Agreement will be terminated.
9. Nothing in the Agreement shall be construed to mean that the Region by virtue of this Agreement has assumed the responsibility of such compliance or any compliance with any municipal by-laws. The Owner covenants to fully comply with any order, by-law, law, regulation, and direction of any lawful authority, including the municipal, provincial, or federal governments or their respective agents with respect to the Encroachment.
10. That the rights conferred by this Agreement shall not be assignable.
11. Any notice to be given or document to be delivered to the Owner or the Region shall be sufficiently given or delivered if delivered personally or if sent by facsimile transmission or ordinary prepaid mail to the following addresses:

If intended for the Owner, at:

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**The Corporation of the Town of Caledon
Parks and Recreation Department
6311 Old Church Road
Caledon, ON L7C 1J6**

Attention: Director of Parks and Recreation

Fax: 905-584-4325

and if intended for the Region, at:

**The Regional Municipality of Peel
10 Peel Centre Drive, Suite B, 6th Floor
Brampton, ON L6T 4B9**

**Attention: Manager of Real Estate
905-791-7800, Extension 7624**

Fax: 905-791-3645

Or to such other address or fax number as either party may from time to time notify the other. Any notice or other communication given by personal delivery shall be conclusively deemed to have been received by the party to which it is addressed on the day of actual delivery thereof, or if given by Fax, on the first business day following the transmittal thereof. Any notice sent by prepaid first class mail shall be deemed to have been delivered on the fifth (5th) business day following the date of mailing thereof provided that the postal services have not been interrupted in which case notice shall only be given by personal delivery or Fax as aforesaid.

12. The Owner consents to the registration of this Agreement on the title to the Owner's Lands and shall execute any or all such documents for such purposes.
13. The Owner shall obtain and maintain throughout the Term a comprehensive insurance policy with a minimum liability coverage of FIVE MILLION DOLLARS (\$5,000,000.00) per occurrence, covering the Encroachment to protect the Owner and the Region, and those for whom the Region is in law responsible, from any and all claims for damages, personal injury including death, and for claims from property damage which may arise from the Owner's use and/or removal or in relation to the Encroachment under this Agreement, including the use or maintenance or removal of the Encroachment or any act or omission of Owner's contractors, agents or employees while engaged in the work of placing, maintaining, renewing or removing the Encroachment, and such coverage shall include all costs, charges and expenses reasonably incurred with any injury or damage. The insurance policy shall extend to cover the contractual obligations of Owner as stated within this Agreement, shall be in the name of the Owner and shall name The Regional Municipality of Peel as an additional insured thereunder. The policy shall provide that it cannot be cancelled, lapsed or materially changed without at least thirty (30) days notice to the Region by registered mail. Evidence of insurance satisfactory to the Region shall be provided prior to the execution of this Agreement, and annually thereafter.

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14. This Agreement, when executed by the said Parties shall constitute a binding agreement.

IN WITNESS WHEREOF the Owner has on the _____ day of _____, 20__ affixed its corporate seal attested by the hands of the duly authorized officer(s).

THE CORPORATION OF THE TOWN OF CALEDON

PER: _____

Name: _____
Title: _____

PER: _____

Name: _____
Title: _____

I/We have the authority to bind the Corporation.

IN WITNESS WHEREOF The Regional Municipality of Peel has on the _____ day of _____, 20__ affixed its name under the hands of its signing officers in that behalf.

MUNICIPALITY OF PEEL THE REGIONAL

PER: _____

Name: Kathryn Lockyer
Title: Regional Clerk

I have the authority to bind the Regional Corporation.

REAL ESTATE TEAM
Regional Municipality of Peel
10 Peel Centre Drive
Brampton, ON L6T 4B9
905-791-7800, Ext. 5787

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SCHEDULE "A"

Schedule "A" – Owner's Lands forms an integral part of this Encroachment Agreement between The Regional Municipality of Peel (Region) and The Corporation of the Town of Caledon (Owner).

Legal Description:

PIN: 14317-0167 (LT)

Part of Lots 18, 19 and Not Numbered Lot, Block 4, Registered Plan BOL-7 and Part of Lot 9, Concession 6, Town of Caledon (formerly Township of Albion), Regional Municipality of Peel, designated as Parts 1, 2, 3, 4, 5, and 6 on Reference Plan 43R-33015, save and except Parts 14, 15, 16 and 18 on Reference Plan 43R-33174, Parts 1, 2 and 6 on Reference Plan 43R-33260 and Part 1 on Reference Plan 43R-30748.

Realty File No.: ENC- 13017.00
Legal File No.: 20033
Date: March 21, 2013
Project #: 10-1901