

ENCROACHMENT AGREEMENT

BETWEEN:

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

OF THE FIRST PART

-AND-

KANEFF CAPITAL PROPERTIES INC.
(hereinafter called "the Owner")

OF THE SECOND PART

WHEREAS the Owner is the registered owner of the lands located on the east side of Mississauga Road, within the City Brampton, 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 masonry wall and underground irrigation system (hereinafter referred to as the "Encroachments") to encroach upon the widened limits of Mississauga Road (Regional Road 1) being described as Parts 7 and 8 on Reference Plan 43R-34837 and to encroach upon the Region's easement interest in the lands being described as Parts 6 on Reference Plan 43R-34837, and retained in file ENC-12163.00 with the Region (hereinafter referred to as the "Encroachment Lands");

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

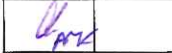
1. The recitals herein are true and accurate.
2. Subject to the provisions hereinafter set out, the Region permits the Owner to have the Encroachments remain for a term of twenty (20) years, commencing upon March 1, 2013 and terminating on February 28, 2033 (hereinafter referred to as the "Term").
3. 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. **Termination by the Region:** The Region shall have the right to terminate this Agreement under the following circumstances:
 - (a) in the event the Region proposes a future widening of that portion of Mississauga Road that abuts the Owner's Lands;
 - (b) in the event the Owner submits a land use planning application with respect to the Owner's Lands; such right shall be exercisable only if the application relates to the Owner's Lands and if it proposes to alter the structures located on the Encroachment Lands.

The Region shall provide the Owner with sixty (60) days written notice of the above and the Owner shall remove the Encroachments, at the Owner's sole cost and expense, within sixty (60) days of any such notice of termination.

Termination by the Owner: The Owner shall have the right to terminate this Agreement at any time upon providing the Region with sixty (60) days written notice of same.

Upon any termination, the Owner shall restore the Encroachment Lands previously occupied by the Encroachments in a manner satisfactory to the Region, acting reasonably.


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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 Encroachments or as a result of the early termination of this Agreement.

5. The Owner agrees and covenants that it will bear all costs associated with the Encroachments. The Owner agrees and covenants that the Encroachments are 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.
6. 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 Encroachment Lands resulting from the Encroachments. 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 Encroachments, 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 Encroachments, their 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 Encroachments and their 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.
7. The Owner agrees that there shall not be any addition, vertically, horizontally or otherwise, to the Encroachments. In the event that the Encroachments are being added to or materially altered, they will be relocated within the Owner's Lands. Upon such removal or relocation, this Agreement will be terminated.
8. 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 Encroachments.
9. That the rights conferred by this Agreement shall not be assignable.
10. 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:

**Ms. Pina Grella
Barrister and Solicitor
101-8501 Mississauga Road
Brampton, Ontario L6Y 5G8**

Fax: 905-453-6016

and if intended for the Region, at:

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



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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.

11. 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.

12. 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 Encroachments 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 Encroachments under this Agreement, including the use or maintenance or removal of the Encroachments or any act or omission of Owner's contractors, agents or employees while engaged in the work of placing, maintaining, renewing or removing the Encroachments, 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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13. This Agreement, when executed by the said Parties shall constitute a binding agreement.

IN WITNESS WHEREOF the Owner has on the 9th day of April, 20013 affixed its corporate seal attested by the hands of the duly authorized officer(s).

KANEFF CAPITAL PROPERTIES INC.

PER: [Signature]
Name: ERIC MEKNIGHT
Title: EXECUTIVE VICE-PRESIDENT

PER: [Signature]
Name: ANNA-MARIA KANEFF
Title: VICE PRESIDENT, COMMERCIAL

I/We have the authority to bind the Corporation.

The undersigned accept the above Offer.

IN WITNESS WHEREOF The Regional Municipality of Peel has on the _____ day of _____, 2013 affixed its name under the hands of its signing officers in that behalf.

THE REGIONAL MUNICIPALITY OF PEEL

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. 7638

Realty File No.: ENC- 12163.00
Legal File No.: 17171
Date: March 18, 2013
Project #: 02-4120

[Signature]
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SCHEDULE "A"

Description of Lands forms an integral part of this Agreement between Kaneff Capital Properties Inc. (Owner) and The Regional Municipality of Peel (Region).

The Owner's Lands are described as Part Lot 3, Concession 4, West of Hurontario Street, City of Brampton (formerly Township of Chinguacousy), Regional Municipality of Peel, and designated as Part 1 on Reference Plan 43R-24205, save and except Parts 3 to 7 on Reference Plan 43R-34124 and save and except Parts 7, 8, 14 and 15 on Reference Plan 43R-34837.

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