

## **ENCROACHMENT AGREEMENT**

**THIS AGREEMENT** made this 29<sup>th</sup> day of June, 2010

**B E T W E E N:**

**LAURIE-ANN MARIE MELITO**

Hereinafter referred to as the **"OWNER"**

**- AND -**

**THE CORPORATION OF THE TOWN OF PELHAM**

Hereinafter referred to as the **"TOWN"**

**WHEREAS** the Owner is the owner of lands more particularly described in Schedule "A" (the Owner's Lands");

**AND WHEREAS** a portion of the Owner's concrete deck surrounding her pool (the "Deck") encroaches upon the easement in favour of the Town, registered as Instrument No. SN125561 (the "Easement"), which said Easement is located upon a portion of the Owner's Lands more particularly described as Part 2 on Plan 59R-13236;

**AND WHEREAS** the Owner has requested and the Town has agreed to permit the encroachment of the Deck to continue upon the terms and conditions contained herein;

**NOW THEREFORE THIS AGREEMENT WITNESSETH**, that in consideration of the mutual covenants and agreements herein contained, the parties hereto covenant and agree as follows:

1. The Owner shall be permitted to maintain the Deck in its current location on the Easement provided that she complies with the terms and conditions of this agreement and until the termination of this agreement.
2. The Owner shall, at her expense and throughout the term of this agreement, be responsible for the maintenance and repair of the Deck, and keeping said Deck in a good and proper state of repair and safety and to the complete satisfaction of the Town, acting reasonably, and shall not make any additions, expansions or extensions to the Deck or excavate, fill, drill or install or erect any other decks or structures of any kind in or upon the Easement. In addition the Owner shall comply with such further and additional requirements as may be required by the Town, acting reasonably.
3. The Owner shall, at her expense, keep that portion of the Easement

surrounding the Deck free and clear at all times of garbage, debris and all obstructions and shall, in addition, abide by the provisions of the Easement as contained in the easement document registered on title as Instrument No. SN125561.

4. It is hereby declared and agreed that no length of time of, or enjoyment by the Owner of the permission granted by the Town as well as nothing herein contained shall be construed as a waiver of the Town's rights contained in the Easement document registered as Instrument No. SN125561 or as granting to the Owner or her successors in title anything more than permission to maintain the Deck in its present location in accordance with the terms of this agreement until such time as this permission is terminated. In addition, and without restricting the generality of the foregoing, the Owner and her successors in title shall not deprive the Town by the operation of any limitation period or otherwise of any right to require the removal of the Deck or any restoration of the Easement in accordance with the terms of this agreement and to the satisfaction of the Town at the Owner's expense.

5. The Owner covenants and agrees that the Town, and its respective officers, servants, workers, employees, agents and contractors under its control or supervision or any of them shall have the right from time to time and at all reasonable times during the currency of this agreement, to enter in and upon the lands described in Schedule "A" or any part thereof, with all necessary workers, plant, equipment and material for the purpose of inspecting, altering or removing the Deck from the Easement in accordance with this agreement. Such inspection shall not free or relieve the Owner in any way whatsoever from the liability under the covenant set out to keep and maintain the Deck in good and proper repair and condition.

6. The Owner acknowledges and agrees that this agreement does not in any way whatsoever diminish the rights of the Town and its respective officers, servants, workers, employees, agents and contractors, to enter at all times upon the Easement for the purpose of constructing, repairing, maintaining, replacing or removing any sewers, mains, culverts, drains, water pipes, gas pipes, poles, wires or other underground services and installations and appurtenances thereto. The Owner shall not be entitled to any damages or compensation by reason of the exercise of the Town's rights contained in this clause and the Owner at her own expense shall carry out such alteration or removal of the Deck as the Town may direct pursuant to the exercise of the Town's rights.

7. Upon the occurrence of any of the following events:

- (i) the Owner shall have breached any covenant or failed to perform any of its obligations pursuant to this agreement, and the Town shall have given written notice to the Owner specifying the nature of default and the steps required to correct it and the Owner shall have failed to correct the default in the time as required by the notice, which said time shall not be less than fifteen (15) days,

the Town, at its option, may immediately terminate this agreement.

8. The Owner acknowledges and agrees that this agreement and the permission granted to her by the Town for the encroachment of the Deck shall immediately terminate upon the earlier of:

- (i) the Town electing to terminate this agreement in accordance with paragraph 7;
- (ii) the Deck being destroyed or demolished in total or in part or otherwise removed from its present location;
- (iii) the lands described in Schedule "A" being conveyed, unless the purchasers or transferees of said lands agree in writing, in form satisfactory to the Town, to be bound by the terms of this agreement.

Upon any termination of this agreement the Deck, if still in existence, shall be demolished or otherwise removed within one (1) month of the termination of this agreement failing which the Town shall be permitted to demolish or otherwise remove the Deck at the cost of the Owner and such cost shall be due immediately and the Town shall be permitted to recover same from the Owner by action or in like manner and with the same remedies as municipal taxes.

9. The Owner hereby indemnifies and saves harmless the Town from and against all liability, losses, damages, actions, causes of action, claims, suits, demands, expenses or any costs whatsoever which may arise either directly or indirectly by reason of an act, neglect or refusal of the Owner, its agents, invitees or licencees with respect to the Deck or due to or arising:

- (i) out of a breach by the Owner of any provision of this agreement;
- (ii) out of the use and location of the Deck;

- (iii) out of the permission hereby granted to the Owner by the Town; or
- (iv) out of the exercise by the Owner of such permission.

10. Any notice, demand, acceptance or request provided for in this agreement shall be in writing and shall be deemed to be sufficiently given if personally delivered or sent by registered mail (postage prepaid) as follows:

To the Town at:

Town Clerk  
Town of Pelham  
P. O. Box 400  
Fonthill, Ontario  
L0S 1E0

To the Owner at:

58 Kline Crescent  
Fonthill, Ontario  
L0S 1E5

or any other such address that the parties may from time to time give notice of same in writing pursuant to this paragraph and every such notice shall be deemed to have been given upon the day it was so delivered or on the third day after the date upon which it is mailed by registered mail.

11. The Owner hereby consents to the registration of this agreement against the title to the lands described in Schedule "A".

12. This agreement constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof and there are no other written or verbal agreements or representations between the parties hereto pertaining to the subject matter hereof. Any amendments to this agreement shall be in writing signed by both parties hereto.

13. If any term, clause or provision of this agreement shall be adjudged to be invalid, the validity of any other term, clause, or provision shall not be affected, and such invalid term, clause, or provision shall be deleted from this agreement.

14. Any condoning, excusing or overlooking by the Town of any default, breach or non-observance by the Owner of any covenant or condition contained herein does not operate as a waiver of the Town's rights hereunder in respect of subsequent default, breaches or non-observances and does not defeat or affect in any way the rights of the Town herein in respect of any subsequent defaults, breaches or non-observances.

15. The words importing the singular number only shall include the plural, and

vice versa, and words importing the masculine gender shall include the feminine gender, and words importing persons shall include firms and corporations and vice versa.

16. This agreement shall be governed by and construed in accordance with the laws of the Province of Ontario.

17. This agreement shall enure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, administrators, successors and transferees and upon those persons or corporations hereafter acquiring title to or an interest in all or any part of the lands described in Schedule "A".

**IN WITNESS WHEREOF** the parties hereto have affixed their corporate seals attested to by the hands of their duly authorized officers.

SIGNED, SEALED AND DELIVERED ) THE CORPORATION OF THE TOWN  
 ) OF PELHAM

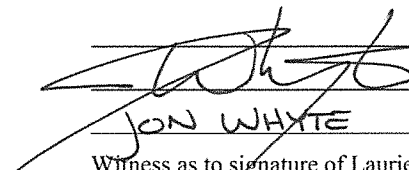
) PER: 

\_\_\_\_\_) Mayor - Dave Augustyn

) PER: 

\_\_\_\_\_) Clerk - Nancy Bozzato

) We have authority to bind the corporation.

  
JON WHYTE

\_\_\_\_\_) Witness as to signature of Laurie-Ann

Marie Melito

) 

\_\_\_\_\_) LAURIE-ANN MARIE MELITO

**SCHEDULE "A"****OWNER'S LANDS**

Part Block 40, Plan 59M-348, being Parts 1 and 2 on Plan 59R-13236, S/T easement in gross over Part 2 on Plan 59R-13236, as in SN125561, Pelham and being all of PIN 64035-0738 (LT).