

ENCROACHMENT AGREEMENT

THIS AGREEMENT made this 4th day of August, 2015.

BETWEEN:

THE CORPORATION OF THE TOWN OF PELHAM
(hereinafter referred to as the "Town")

AND

ROBERT TREPANIER
(hereinafter referred to as the "Owner")
AND

KATHERINA TREPANIER
(hereinafter referred to as the "Spouse")

WHEREAS the Owner warrants and covenants that he is the owner of the lands described in Schedule "A" attached hereto (the "Lands");

AND WHEREAS the Spouse is the spouse of the Owner;

AND WHEREAS the Owner wishes to continue to utilize and maintain a driveway access to the Lands over a portion of the road allowance between Lots 6 and 7, Concession 5, Town of Pelham, which said portion is more particularly described in Schedule "B" (the "Road Allowance Portion");

AND WHEREAS the Town has agreed to permit the Owner to have access over the Road Allowance Portion for his driveway upon certain terms and conditions as contained herein;

AND WHEREAS Sections 8, 9 and 11 of the Municipal Act, 2001, S.O. 2001, c.25 authorize the Town to act as is necessary or desirable for municipal purposes, and in particular Section 11(1) authorizes the municipality to provide any service or thing that the municipality considers necessary or desirable for the public;

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

1. The Town hereby gives permission to the Owner to use and maintain a previously-constructed driveway across the Road Allowance Portion for the purposes of access for ingress and egress to the Lands. This permission granted by the Town shall be non-exclusive and shall only be for the use of a driveway to be constructed on the Road Allowance Portion.
2. The Owner covenants and agrees that he will maintain the Road Allowance Portion in such manner that will permit emergency vehicles to access the Lands and will be constructed in compliance with all regulations and requirements of the Town as to grade, material and quality.
3. In consideration of the Town giving permission to the Owner as aforesaid, the Owner covenants and agrees to indemnify and save harmless the Town and its respective officers, employees, servants and agents, from and against all actions, claims, suits and demands of any kind whatsoever resulting from or in any way arising out of or connected with the construction of the aforementioned driveway and the use of the Road Allowance Portion by the Owner, his guests, invitees, family members and any other person using the driveway.
4. Without limiting the generality of paragraph 3 above, the Owner shall be fully responsible for:
 - a) any personal injury or property damage resulting from flooding of the Lands, Road Allowance Portion or any other surrounding lands;
 - b) damage to utilities; and

c) any other damage or injury,

attributable to the construction of the aforementioned driveway and the use of the Road Allowance Portion by the Owner.

5. The Owner further covenants and agrees to take out and keep in force throughout the term of this agreement comprehensive liability insurance with a limit of not less than \$2,000,000.00 per occurrence against claims for personal injury, death or property damage arising out of any acts or occurrence upon, in, or about the Lands and the Road Allowance Portion provided that the insurance policy shall contain a cross-liability clause protecting the Town against claims by the Owner as if the Town was separately insured and protecting the Town against claims by the Owner or any other party. The insurance policy shall further contain a clause that the insurers will not cancel or change or refuse to renew the insurance without first giving the Town thirty (30) days prior written notice. The Owner further covenants and agrees to submit to the Town satisfactory evidence of having obtained the insurance required herein and to submit copies of such policies forthwith for approval thereof by the Town.
6. The Owner shall at his own cost, charge and expense, and to the satisfaction of the Town, keep and maintain the driveway and the Road Allowance Portion in good and proper state of repair and safety.
7. The Owner acknowledges and agrees that the permission granted herein does not in any way whatsoever diminish the rights of the Town, or any gas, telephone, telegraph, electric light or other public utility company, and their respective officers, servants, workers, employees, agents and contractors, to enter at all times upon the driveway or the Road Allowance Portion 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 or any utility company's rights contained in this paragraph and the Owner at his expense shall carry out such work as the Town may direct pursuant to the exercise of the Town's or any utility company's rights. The Owner covenants and agrees at all times to observe and comply with, and endeavor to ensure strict observance and compliance with, all statutory requirements, rules, regulations, and any by-laws of the Town or other authority which in any manner may affect or relate to the use of the untraveled portions of roads or road allowances under the jurisdiction of the Town.
8. The Owner agrees to pay the sum of \$200.00 to cover the costs incurred by the Town to erect any "HIDDEN DRIVEWAY AHEAD" signage on Kilman Road to the east or any other location near to the proposed driveway location. In addition, the Owner agrees to pay all of the Town's costs related to the preparation and registration of this agreement and any other administration costs related thereto.
9. The Owner further covenants and agrees that he may not assign or transfer the permission for the use of the Road Allowance Portion without the prior written consent of the Town.
10. In the event that the Owner wishes to sell, transfer or assign all or any part of his interest in the Lands, the Owner agrees that he will require any purchaser, transferee or assignee to enter into an agreement with the Town on the same terms and conditions as set out herein. It is understood and agreed that the Owner shall not be released from his obligations hereunder, unless and until the purchaser, transferee or assignee enter into the agreement, which agreement shall be prepared and registered on title by the Town at the expense of the Owner.
11. The Owner hereby agrees that this agreement and the authorizing by-law may be registered against the title to the Lands.

12. The invalidity of any particular provision in this agreement shall not affect any other provision of this agreement and the agreement shall be construed as if the invalid provision had been omitted.
13. This agreement and the Owner's use of the Road Allowance Portion shall continue only for so long as the Owner shall use the driveway as access for ingress and egress to the Lands and upon any abandonment of such use then this agreement shall terminate. In the event that the Owner is in default pursuant to any term, covenant or condition of this agreement and shall fail to rectify such default within fifteen (15) days of written notice by the Town, then the Town shall be permitted to immediately terminate this agreement and the Owner shall have no further use of the driveway or the Road Allowance Portion.
14. Any notice or other writing required or permitted to be given under this agreement or for the purposes hereof (referred to in this paragraph as a "notice") to any party shall be sufficient given if delivered personally, or if sent by prepaid registered mail or if transmitted by fax or other form of recorded communication tested prior to transmission to such party:

a) in the case of notice to the Town at:

**P.O. Box 400
Fonthill, Ontario
L0S 1E0
Attention: Town Clerk
Fax: (905) 892-5055**

b) in the case of Robert Trepanier and Katherina Trepanier at:

**350 Kilman Road
Ridgeville, Ontario
L0S 1M0**

or at such other address as the party to whom such writing is to be given shall have last notified the party giving the same in the manner provided in this paragraph. Any notice delivered to the party to whom it is addressed as provided in this paragraph shall be deemed to have been given and received on the day it is so delivered at such address, provided that if such day is not a business day then the notice shall be deemed to have been given and received on the business day next following such day. Any notice mailed as aforesaid shall be deemed to have been given and received on the third business day next following the date of its mailing. Any notice transmitted by fax or other form of recorded communication shall be deemed given and received on the first business day after its transmission. For the purpose of this agreement "business day" shall mean a day other than Saturday or Sunday on which the commercial banks are open for business during normal banking hours.

15. This agreement shall be construed pursuant to the laws of the Province of Ontario.
16. The Spouse has executed this agreement in order to give her consent to the Agreement as spouse of the "Owner" and acknowledging all obligations pursuant to this Agreement and agrees to be bound by same.
17. This agreement and everything herein contained shall ensure to the benefit of and be binding upon the parties, their heirs, executors, administrators, successors and assigns as the case may be and upon anyone acquiring an interest in the Lands.

IN WITNESS WHEREOF the parties have executed and delivered this agreement as of the date first written above.

SIGNED, SEALED AND DELIVERED
In the Presence of

)THE CORPORATION OF THE TOWN
)PELHAM

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)
)
) Dave Augustyn, MAYOR

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) Nancy J. Bozzato, CLERK

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) ROBERT TREPANIER

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)
)
) KATHERINA TREPANIER

K. Braun
Witness as to the signature of
Robert Trepanier

K. Braun
Witness as to the signature of
Katherina Trepanier

SCHEDULE "A"

FIRSTLY:

Part of Lot 6, Concession 5, Town of Pelham, formerly Township of Pelham, Regional Municipality of Niagara, containing by admeasurement an area of 6.982 acres more or less, and which said parcel or tract of land is more particularly described by Richard Larocque, O.L.S., of Richard Larocque Limited as follows:

PREMISING that the centre line of the lands of Ontario Hydro has an astronomic bearing of north 86 degrees 28 minutes west through Lot 6, Concession 4 according to the lands described in an easement to Ontario Hydro in registered instrument 16332 and all bearings herein related thereto;

COMMENCING at the north-west corner of said Lot 6 as defined by a fence post;

THENCE south 01 degrees 49 minutes and 45 seconds east along the easterly limit of the unopened road allowance between Lots 6 and 7, 544.15 feet to its intersection with a fence;

THENCE north 76 degrees 12 minutes east along the fence, 543.35 feet to an iron tube found;

THENCE north 28 degrees 21 minutes and 20 seconds east along a fence, 431.7 feet to an iron pipe found;

THENCE north 39 degrees 33 minutes and 10 seconds east along the fence 45.05 feet to its intersection with the southerly limit of the unopened road allowance between Concessions 4 and 5;

THENCE south 89 degrees 58 minutes and 25 seconds west along the southerly limit of said road allowance, 778.75 feet more or less to the point of commencement.

As described as Firstly in Instrument No. 426969.

Being all of P.I.N. 64035-0303 (R).

SECONDLY:

Part of Lot 6, Concession 4, Town of Pelham, formerly Township of Pelham, Regional Municipality of Niagara, containing by admeasurement an area of 4.875 acres more or less, and which said parcel or tract of land is more particularly described by Richard Larocque Limited, O.L.S., of Richard Larocque Limited as follows:

PREMISING that the centre line of the lands of Ontario Hydro has an astronomic bearing of north 86 degrees 28 minutes west through Lot 6, Concession 4 according to the lands described in an easement to Ontario Hydro in registered instrument 16332 and all bearings herein related thereto;

COMMENCING at the intersection of the easterly limit of the given Kilman Road with the northerly limit of the unopened road allowance between Concession 4 and 5 distant therein north 10 degrees 51 minutes and 40 seconds east, 67.2 feet from the north-west corner of Lot 6, Concession 5 as defined by a fence post;

THENCE north 89 degrees 58 minutes and 25 seconds east along the northerly limit of the said unopened road allowance, 982.85 feet to its intersection with the south-westerly limit of the given Kilman Road;

THENCE north 38 degrees 26 minutes and 10 seconds west along the said south-westerly limit of the given Kilman Road, 263.77 feet to an angle therein;

THENCE north 60 degrees 05 minutes west continuing along the said limit, 100.12 feet to an angle therein;

THENCE north 72 degrees 00 minutes west, along the southerly limit of Kilman Road to an angle therein, 78.27 feet to an angle therein;

THENCE north 86 degrees 42 minutes and 10 seconds west along the said southerly limit, 332.46 feet to an angle therein;

THENCE south 54 degrees 02 minutes and 30 seconds west along the south-easterly limit of Kilman Road, 384.83 feet to an angle therein;

THENCE south 10 degrees 51 minutes and 40 seconds west along the easterly limit of Kilman Road, 75.7 feet to the point of commencement.

SUBJECT to easements granted to the Ontario Hydro and described in registered instruments 12402 (1929) and 16332 (1949).

As described as Secondly in instrument 426969.

Being all of P.I.N. 64035-0175 (R).

SCHEDULE "B"

Being the northern twenty-five (25) metres of the road allowance between Lots 6 and 7,
Concession 5, Town of Pelham, Regional Municipality of Niagara.