

ENCROACHMENT AGREEMENT

THIS ENCROACHMENT AGREEMENT is made this 6th day of June, 2016.

Between:

The Corporation of the Town of Pelham

(the "Town")

- and -

McGill Turpel Family Holding Corp.

(the "Owner")

WHEREAS:

(a) The Owner represents that he is the registered owner of certain lands and premises, being Part Lot 25 on Plan No. 717 in the Town of Pelham, Regional Municipality of Niagara, known municipally as 1421 Pelham Street, (the "Owner's Property"), which abuts the Pelham Street road allowance (the "Town Lands");

(b) A building is located on the Owner's Property of which the balcony encroaches 1.5 m onto the Town Lands as shown on the sketch attached as **Schedule "A"** (the "Encroachment");

(c) The Owner has applied to the Town so that he may be allowed to maintain and use the Encroachment for an indefinite period.

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the terms and conditions herein and the sum of Two (\$2.00) Dollars now paid by the Owner to the Town, the receipt and sufficiency of which is hereby acknowledged, the Owner and the Town covenant and agree as follows:

1. The Town and the Owner acknowledge and agree that the Encroachment shall be permitted on the Town Lands subject to the terms and conditions herein.
2. The Owner acknowledges that no representation has been made by the Town of any authority to grant the privilege to use and maintain the Encroachment and such use and maintenance by the Owner shall at all times be at the Owner's risk.
3. The Owner and the Town covenant and agree as follows:
 - (a) The Owner shall make no alteration to the Town Lands, including without limitation the removal of trees or grade changes, and shall not erect any

building or structures on the Town Lands without the Town's written permission;

- (b) The Owner shall obtain and maintain insurance in accordance with the following:
 - (i) Comprehensive general liability insurance, in a form satisfactory to the Town Clerk in an amount not less than Five Million Dollars (\$5,000,000.00) inclusive per occurrence for bodily injury, death and damage to property, including loss of use thereof, in the joint names of the Owner and the Town of Pelham;
 - (ii) To ensure that the above-mentioned insurance is not cancelled, amended or permitted to lapse, the policy shall contain an endorsement to provide all named insureds with thirty (30) days prior notice of changes or the cancellation of the policy; and
 - (iii) A Certificate of Insurance evidencing the above insurance coverage shall be provided to the Town prior to the Town signing the Agreement and thereafter promptly on the insurance renewal date;
- (c) The Owner shall request Tenants obtain and maintain comprehensive general liability insurance in an amount not less than Two Million Dollars (\$2,000,000.00) inclusive per occurrence for bodily injury, death and damage to property, including loss of use thereof, in the joint names of the Tenant and the Town of Pelham.
- (d) Subject to section 3(e) herein, if the Encroachment, or the building to which the Encroachment is attached, is rebuilt, altered or removed in any way for any reason, the Owner shall remove the Encroachment from the Town Lands;
- (e) If the Encroachment is moved, altered or changed in any manner during the lifetime of this Agreement, the Owner shall apply for a new Encroachment Agreement if the Encroachment will remain on Town lands after such movement, alteration or change;
- (f) The Owner of the premises to which an Encroachment is appurtenant shall at all times maintain and keep the Encroachment and adjacent surface in proper repair at the Owner's expense, in a proper and safe condition for the traffic thereon, and to Town standards. If the Encroachment is not kept in good repair, upon written notice from the Town, the Owner of the premises to which the Encroachment is appurtenant shall repair the Encroachment and the adjacent surface at his own expense and to the Town's specifications. If the notice is not complied with within ten (10) days from the date that the notice is sent, the Town may renew or repair the highway at the expense of the Owner, add the cost to the tax roll and collect same in like manner as municipal taxes;
- (g) Upon removal of the Encroachment from the Town Lands, the Owner shall

maintain and restore the Town Lands to the condition that the Town Lands were in prior to the date of the Encroachment or in compliance with the standards of the Town at the Owner's sole expense. In the event such restoration is not made, the Town may complete such restoration work at the expense of the Owner and recover the expense by any legal means available including the addition of the cost to the tax roll. The Town shall have the right to collect such expenses in like manner as municipal taxes.

4. The Owner will at all times indemnify and save harmless the Town from and against all loss, liability, claims, demands, damages, costs and expenses, including reasonable legal fees and disbursements, which the Town may suffer, be put to or incur for or by reason of or on account of the existence of the Encroachment or the entering into of this Agreement or the maintenance of the Encroachment or any other matter or thing relating to the Encroachment.
5. If the Owner defaults in performing any of its obligations under this Agreement, the Town shall give written notice to the Owner of such default giving the Owner ten (10) days to remedy the default, failing which the Town may terminate this Agreement. Any waiver by the Town of any breach by the Owner or any provisions of this Agreement shall be without prejudice to the exercise by the Town of all or any of its rights or remedies in respect of any continuance or repetition of such breach.
6. The Town or Owner may terminate this Agreement on sixty (60) days written notice for any reason.
7. The Owner and the Town hereby agree that this Encroachment Agreement shall cover the Encroachment described in any Application submitted by the Owner and this Encroachment Agreement shall not grant any permission to erect any new part of any new building and shall not provide any implied right on the part of the Owner to alter, reconstruct or otherwise change the Encroachment approved by the Town in the Encroachment Application.
8. This Encroachment 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 property to which the Encroachment is appurtenant, the Owner shall instruct the purchaser of the said property to submit a new Encroachment Application to the Town for the Town's review and approval.
9. In the event that the Encroachment represents a danger or detrimentally impacts: (i) the safety of persons using the Town Lands; (ii) traffic flow; (iii) safety of the public (iv) encroaches on the rights of others to use the road allowance; or (v) interferes with future road improvements, the Owner and the Town acknowledge that the Town shall have a right to terminate this Agreement. Such termination of this Agreement shall be by written notice to the Owner, except in the case of an emergency. In the case of an emergency, the Encroachment Agreement may be terminated forthwith by the Town.

10. In the event that this Agreement is terminated, the Owner shall remove the Encroachment within thirty (30) days of the date of termination. If the Owner fails to remove the Encroachment on the date of termination, the Town shall provide the Owner with a notice requiring the Owner to remove the Encroachment within ten (10) days. If the Owner fails to remove the Encroachment within the ten (10) day period, the Town shall have the right to remove the Encroachment at the expense of the Owner and add the cost of removal to the tax roll and shall also have the right to collect such costs in like manner as municipal taxes. In the case of an emergency, the Town shall have the right to remove the Encroachment forthwith on the date of termination of the Agreement at the expense of the Owner and such costs shall be added to the tax roll and collected in like manner as municipal taxes.
11. Any notice required to be given to the Town or the Owner under this Agreement shall be sufficiently given if delivered or mailed postage prepaid to the addresses below. Such notice shall be deemed to have been received on the date of its delivery or in the case of mailing, three (3) business days after it was delivered to the post office.

Town of Pelham
20 Pelham Town Square
P.O. Box 400
Fonthill, ON L0S 1E0

McGill Turpel Family Holding Corp.
Unit 15 & 16 100 Fourth Avenue
St. Catharines, ON L2S 3P2
12. This Agreement shall enure to the benefit of, and be binding upon the parties and their respective heirs, administrators, estate trustees, successors and (where permitted) assigns.
13. The Owner and the Town hereby agree that this Agreement shall be registered on title to the Owner's Property at the Owner's expense. The Owner and the Town shall take such further deeds, actions and execute such further documents that may be necessary to effect such registration.

WITNESS my hand and seal at Fonthill, Ontario, this 10 day of June, 2016.

E. R. Apple
- Owner

IN WITNESS WHEREOF the Corporation of the Town of Pelham has hereunto caused to be affixed its Corporate Seal attested by the hands of its proper signing officers.

THE CORPORATION OF THE TOWN OF PELHAM

[Signature]
Per: Mayor

Nancy J. Bozack
Per: Town Clerk

