

ENCROACHMENT AGREEMENT

THIS AGREEMENT made this 16th day of August, 2021.

BETWEEN:

MCGILL TURPEL FAMILY HOLDING CORPORATION

Hereinafter referred to as the "Owners"

- AND -

THE CORPORATION OF THE TOWN OF PELHAM

Hereinafter referred to as the "Town"

WHEREAS the Owners are the owners of lands more particularly described in Schedule "A", which are municipally known as 1471 Pelham Street;

AND WHEREAS it has been determined that a portion of a building situated on the Owners' lands encroaches upon a public highway known as Pelham Street, which said encroachment is more particularly shown on Schedule "B";

AND WHEREAS the Owners have requested and the Town has agreed to permit the Encroachment to continue upon the terms and conditions contained herein;

AND WHEREAS the Town is authorized to allow any person owning or occupying any building or other erection that by inadvertence has been wholly or partially erected upon any highway to maintain and use such erection thereon.

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 Owners shall be permitted to maintain the Encroachment in its current location as shown on Schedule "B" provided that they comply with the terms and conditions of this agreement.
2. This agreement shall come into effect on the date that it is signed by the parties and shall continue until it is amended or terminated in accordance with the provisions herein.
3. The Owners shall, at their expense, be responsible for the maintenance and repair of the Encroachment throughout the term of this agreement. Notwithstanding the foregoing, the Owners shall not make or permit any additions, expansions or extensions to the Encroachment, nor shall the Owners excavate, fill, drill, install or erect any other buildings or structures of any kind in or upon Pelham Street and/or the municipal road allowance, without the express prior written consent of the Town.

4. The Owners covenant and agree to maintain and repair the Encroachment in a good and safe condition to the complete satisfaction of the Town, acting reasonably, and to maintain and repair the Encroachment and any area immediately adjacent to or surrounding the Encroachment if the condition of said area is impacted, affected or changed by the presence and/or condition of the Encroachment (“the surrounding area”), in a good and safe condition to the complete satisfaction of the Town, acting reasonably.
5. If the Owners fail to maintain and repair the Encroachment and/or the surrounding area in a good and safe condition as set out herein, the Town shall provide the Owners with notice of the nature of the default, the steps required to correct it and the time in which the default must be remedied, which time shall not be less than forty-eight (48) hours.
6. If the Owners fail to remedy the default within the prescribed time, the Town may, at its option, undertake any work necessary to remedy the default at the expense of Owners.
7. The Owners shall, at their expense and at all times throughout the term of this agreement, provide and keep in full force and effect a personal and premises liability policy covering public liability and property damage insurance in respect of the Encroachment naming the Town as an additional insured. Such insurance shall be in an amount of not less than \$5,000,000.00, shall be in a form satisfactory to the Town and shall provide coverage for any injury, including death, or damage to any person or property arising directly or indirectly out of the use and location of the Encroachment. The Owners shall require as a condition of the insurance policy that the insurer give thirty (30) days’ prior written notice to the Town of any change or cancellation of any policy.
8. The Owners shall, upon execution of this agreement, furnish to the Town proof, in a form satisfactory to the Town, of the insurance policy covering the above risks. The Owners shall also provide the Town with proof, satisfactory to the Town, of all renewals of the policy.
9. If the Owners fail to insure as provided for in this agreement or should the policy or policies of insurance be terminated, revoked or otherwise expire, the Town may, at its option, proceed to obtain the required insurance at the cost of the Owners without prejudice to any other rights and resources of the Town and such cost shall be due immediately and the Town shall be permitted to recover same from the Owners by action or in like manner and with the same remedy as municipal taxes.
10. It is hereby declared and agreed that nothing herein contained shall be construed as granting to the Owners anything more than permission to maintain the Encroachment in its present location until such time as this permission is terminated and, without restricting the generality of the foregoing, the Owners shall not acquire any right-of-way, easement or any possessory rights over Pelham Street.

11. Upon the occurrence of any of the following events:
 - a) the Owners breach any covenant or fail to perform any of their obligations pursuant to this agreement, fail to correct the default after being provided with written notice by the Town of the nature of the default, the steps required to correct it and the time in which the default must be remedied, which time shall not be less than fifteen (15) days from the date of the notice; and/or
 - b) any insurance policy or policies required under this agreement are cancelled or not renewed,

the Town, at its option, may immediately terminate this agreement.
12. The Owners acknowledge and agree that this agreement and the permission granted to them by the Town for the Encroachment shall immediately terminate upon the earlier of:
 - a) the Town electing to terminate this agreement in accordance with paragraph 11;
 - b) the Encroachment being destroyed or demolished in total or in part or otherwise removed from its present location; or
 - c) the Encroachment becoming structurally unsound and unsafe and thus a risk to public safety as so determined by the Town.
13. Upon any termination of this agreement the Owners shall arrange for the orderly demolition or removal of the Encroachment, if still in existence, within one (1) month of the termination of this agreement, failing which the Town shall be permitted to demolish or otherwise remove the Encroachment at the Owners' expense. The cost of any such demolition or removal shall be due immediately and the Town shall be permitted to recover same from the Owners by action or in like manner and with the same remedies as municipal taxes.
14. The Owners hereby indemnify and save 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 Owners, their agents, invitees or licensees with respect to any provision of this agreement or due to any matter arising directly or indirectly out of the use and location of the Encroachment.
15. Any notice, demand, acceptance or request provided for in this agreement shall be in writing and shall be deemed to be sufficiently given in personally delivered or sent by registered mail (postage prepaid) as follows:

To the Town at:

Town Clerk
Town of Pelham
20 Pelham Town Square, Box 400
Fonthill ON LOS 1E0

To the Owners at:

McGill Turpel Family Holding Corporation
1471 Pelham Street
Fonthill ON LOS 1E4

With a copy to:

The Fonthill Inn
8 Beechwood Crescent
Fonthill ON LOS 1E7

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.

16. The Owners hereby consent to the registration of this agreement against the title to the lands described in "Schedule A". The Owners hereby consent to pay the legal fees and disbursements incurred by the Town in association with registering this agreement on title and any future amendments thereto.
17. This agreement constitutes the entire agreement between the parties pertaining to its subject matter and there are no other written or verbal agreements or representations between the parties hereto pertaining to the subject matter of this agreement. Any amendments to this agreement shall be in writing, signed by both parties, and appended to this agreement.
18. The parties agree that they shall and will, upon reasonable request of the other party, make, do, execute, cause to be made, done or executed all such further and other lawful acts, deeds, things, devices and assurances whatsoever for the further and more perfect and absolute perfection of the terms, conditions and covenants of this agreement.
19. 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.

- 20. Any condoning, excusing or overlooking by the Town of any default, breach or non-observance by the Owners 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.
- 21. This agreement shall be governed by and construed in accordance with the laws of the Province of Ontario.
- 22. 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 & DELIVERED this day of, 2021.

THE CORPORATION OF THE TOWN OF PELHAM

Per: _____
Marvin Junkin
Mayor

Per: _____
Holly Wilford
Clerk

We have authority to bind the Corporation.

MCGILL TURPEL FAMILY HOLDING CORPORATION

By: _____
Name:
Title:

By: _____
Name:
Title:

I/We have authority to bind the Corporation.

SCHEDULE "A"

Plan 717, PT LOT 33,
as in RO269894,
PIN: 64064-0161
Town of Pelham
Regional Municipality of Niagara

Plan 717, PT LOT 33
As in RO452080
PIN: 64064-0160
Town of Pelham
Regional Municipality of Niagara

SCHEDULE "B"

1471 Pelham Street Encroachment Survey