

ENCROACHMENT AGREEMENT for the property commonly known as municipal address 835 Sandy Bay Road, Dunnville, Ontario.

The AGREEMENT made this day of , 2019.

BETWEEN:

THE CORPORATION OF HALDIMAND COUNTY
Herein called the "COUNTY" of the FIRST PART

And

JOSEPH BRENNAN
Herein called the "OWNER" of the SECOND PART

WHEREAS the County is the owner of certain lands and premises being PIN # 38128-0263(LT) Part Lot 18, Concession 5, South of Dover Road Dunn as in HC45041; Part Lot 13, Concession 5 South of Dover Road Dunn as in D4967; Part Lots 15-17, 14, Concession 5 South of Dover Road Dunn as in HC42863, as in HC48478, and Part Lot 16, Concession 5 South of Dover Road Dunn being a travelled road aka Lakeshore Road aka Sandy Bay Road between Road allowance between Lots 12 & 13, Concession 5 South of Dover Road Dunn and Road Allowance between Lots 18 & 19 Concession 5 South of Dover Road Dunn; Haldimand County, being Sandy Bay Road in Dunnville, Haldimand County;

AND WHEREAS the County is the owner of certain lands and premises being PIN # 38128-0051(LT) Road Allowance between Lots 12 and 13, Concession South of Dunnville to Dover Road Dunn; Road Allowance between Lots 12 and 13, Concession 5 South of Dunnville to Dover Road Dunn; Haldimand County;

AND WHEREAS the Owner is the owner of the lands and premises being PIN # 38128-0301(LT), being Part of Lot 13, Concession 5 South of Dover Road Dunn as in HC289251; Haldimand County, more particularly described as Part 1 on Reference Plan 18R-_____, Haldimand County, and municipally known as 835 Sandy Bay Road in Dunnville;

AND WHEREAS the Owner has requested the County to allow the continuance of this encroachment, of that portion of the rock wall and driveway owned by the Owner and encroaching on the property owned by the County as aforementioned (herein called "Encroachments");

AND WHEREAS the County has agreed to allow the Owner the right of continuance of these Encroachments, together with a maintenance encroachment, in accordance with the terms and conditions of this Agreement.

NOW THIS AGREEMENT WITNESSETH THAT:

1. The existing portion of the rock wall, driveway and knee wall maintenance area, located on the property owned by the Owner, may continue to encroach on the lands and premises being Part of PIN # 38128-0263(LT), Part of Lot 13, Concession 5 South of Dover Road; Haldimand County, and to allow an encroachment for maintenance on the lands and premises being Part of PIN # 38128-0051(LT), being Part of the Road Allowance between Lots 12 and 13, Concession 5 South of Dover Road; Haldimand County, designated as Parts _____ on Reference Plan 18R-_____ (herein called "Encroachment Area").
2. The encroachment of the said rock wall, driveway and knee wall maintenance area on to Part of PIN # 38128-0263(LT), Part of Lot 13, Concession 5 South of Dover Road; Haldimand County, and to allow an encroachment for maintenance on the lands and premises being Part of PIN # 38128-0051(LT), being Part of the Road Allowance between Lots 12 and 13, Concession 5 South of Dover Road; Haldimand County, designated as Parts _____ on Reference Plan 18R-_____ shall be permitted until such time as the said rock wall, driveway and knee wall is demolished, removed or destroyed by fire or otherwise ("Term"), notwithstanding Article 7 of this Agreement. At that time, any right of the Owner to have the said building encroach upon the said lands shall cease.
3. The Owner agrees not to make or cause to be made, any alteration or improvements by way of enlargement, to the said encroachment without the prior written consent of the County.
4. The Owner shall maintain the Encroachments throughout the Term and keep the same in a good state of repair at the Owner's sole expense and cost. Without limiting the generality of the foregoing, the County may at any time give written notice to the Owner requiring that certain maintenance or repair work be carried out with respect to the Encroachments. Forthwith upon receipt of such notice, the Owner shall commence all work described therein and shall have such work completed to the satisfaction of the County within the time period stipulated in the said notice.
5. If the Owner fail to maintain the Encroachments in a good state of repair and if, on the request of the County, the Owner neglect, refuse or fail to repair or maintain the same within a reasonable time, then the County may cause the required work to be done and may charge the costs thereof to the Owner, and the County may recover such costs from the Owner in like manner as taxes that are due and payable.

6. The Owner hereby agrees to maintain the Encroachments in a safe condition and good state of repair.
7. The Owner hereby covenants and agrees that it shall, at its sole expense, obtain and maintain, throughout the term of the encroachment agreement liability insurance with coverage for bodily injury and property damage on an occurrence basis with a limit of not less than one million dollars (\$1,000,000). The Owner shall provide the County with a Certificate of Insurance or other satisfactory evidence of such insurance prior to execution of the Encroachment Agreement and upon the anniversary date of the applicable policy described herein.
8. The Owner hereby covenants and agrees to indemnify and save the County harmless against all manner of actions, causes of action, claims, demands, losses, costs, damages and expenses of whatever kind or nature that may be suffered by or occasioned to the County in any manner whatsoever, by reason of existence of the such Encroachments and projections therefrom.
9. In the event that the County at any time requires for any reason whatsoever the removal of the Encroachments or the termination of this Encroachment Agreement, the Owner shall, at the Owner's sole cost and expense, remove the Encroachments herein upon six (6) months' notice in writing from the County to do so, and shall not make any claim against the County on account of such removal, and shall replace and restore the entire lands hereunto to a safe and proper condition, to the satisfaction of the County. If the Owner neglects, refuses or fails to do so within the term specified in the notice, then the County may remove all installations and restore the Encroachment Area to a safe and proper condition, and may charge the costs thereof to the Owner, and the County may recover such costs from the Owner in like manner as taxes that are due and payable.
10. Service of the notice may be made by delivering it to the Owner personally, or by mailing it, post-paid and registered, to the last known address of the Owner, and in the case of service by registered letter shall be deemed to have been received on the second day following its mailing.
11. Where a notice is not complied with within ninety (90) days after its receipt, the County may in writing authorize any person to enter upon the land involved to do whatever is necessary to comply with the notice, and all costs resulting from this action shall be borne by the Owner.
12. An authorization is authority to the person named herein to enter on the land described therein and to remove the encroaching portion of the building and/or projections as directed and neither the County nor that person is liable for any damages that may be caused in effecting the removal.

13. The County shall have the right and option to register this Agreement, or a notice thereof, against title to the Owner's Lands at the Owner's sole expense and cost.
14. The Owner hereby remises, releases and forever discharges the County, its elected officials, employees, agents and contractors, of and from any and all claims, actions, causes of action and other proceedings and any liability for damages, costs and expenses for or relating to any loss which the Owner may suffer arising out of or occasioned by the presence upon the County Lands of the Encroachments, the condition or state of repair of the Encroachments, the condition or state of repair of the County Lands, or the requirement to remove the Encroachments, and the Owner covenants not to bring any such claim, demand, action or other proceeding against any other person or persons who might claim contribution or indemnity therefor over against the County, its elected officials, employees, agents and contractors.
15. Nothing herein contained shall be construed as giving the Owner anything more than permission for the Encroachments and such permission does not give to the Owner any easement, title, right or interest in the County Lands.
16. Should any of the terms of this Agreement be found to be illegal, unenforceable or ultra vires by a court of competent jurisdiction, then those terms so found shall be severable from this Agreement and the remaining terms herein shall continue in full force and effect.
17. This agreement shall enure to the benefit of and be binding upon all heirs, executors, administrators, successors and assigns of the parties hereto respectively.

18. This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

IN WITNESS WHEREOF the parties have duly caused this Agreement to be executed.

THE CORPORATION OF HALDIMAND COUNTY

Ken Hewitt
MAYOR

Evelyn Eichenbaum
CLERK

SIGNED, SEALED AND DELIVERED

Witness

JOSEPH BRENNAN