

ENCROACHMENT AGREEMENT

BETWEEN:

THE REGIONAL MUNICIPALITY OF PEEL
(hereinafter called "the Region")

OF THE FIRST PART

-AND

KILLAM KAMRES (SILVER SPEAR) INC.
(hereinafter called "the Owner")

OF THE SECOND PART

WHEREAS the Owner is the registered owner of the lands being legally described on Schedule "A" attached hereto (hereinafter referred to as the "Owner's Lands");

AND WHEREAS in accordance with site plan SP-16-056M, the Owner has requested the Region to permit a temporary private hydro pole and a temporary private hydro shack (sea-container) (hereinafter referred to as the "Encroachment") to encroach upon the widened limits of Dixie Road (Regional Road 4) as shown on drawing number # SK-01 as last revised July 16, 2019 prepared by Aba Architects Inc. and retained in file ENC-2020093 with the Region (hereinafter referred to as the "Region Road");

AND WHEREAS pursuant to sections 9 and 11 of the *Municipal Act, 2001*, c.25, the Region has agreed to permit the encroachments subject to the terms and conditions herein;

NOW WITNESSETH that in consideration of the mutual covenants and agreements hereinafter set out, the parties agree as follows:

1. The recitals herein are true and accurate.
2. Subject to the provisions hereinafter set out, the Region permits the Owner to have the Encroachment remain for a term of ten (10) months, commencing on January 1, 2021 and terminating on October 31, 2021 (hereinafter referred to as the "Term").
3. The Owner agrees to pay the Region the following:

(a) Administration fee (one time)	\$ 500.00, plus applicable taxes
(b) Registration fee (Registry Office)	\$ 77.31, includes applicable taxes
(c) Annual fee	\$ 300.00, plus applicable taxes
4. The Owner is the owner of the Encroachment.
5. Notwithstanding Section 2, this Agreement may be terminated at any time by either party upon sixty (60) days written notice to the other party. The Owner agrees to remove the Encroachment at the Owner's sole expense within sixty (60) days of any such notice of termination. The Owner shall restore the area previously occupied by the Encroachment in a manner satisfactory to the Region, acting reasonably. The Owner agrees not to make any claims, demands, and/or commence any actions, suits, proceedings or maintain the same for any and all costs, damages, losses, compensations, injurious affection arising from the Encroachment or as a result of the early termination of this Agreement. This provision shall apply and survive the termination of this Agreement.
6. At the end of the Term, the Owner shall, at their sole cost and expense, remove the Encroachment and restore the area previously occupied by the Encroachment in a manner satisfactory to the Region, acting reasonably. The Owner agrees not to make any claims, demands, and/or commence any actions, suits, proceedings or maintain the same for any and all costs, damages, losses, compensations, injurious affection arising from the Encroachment or as a result of the termination of this Agreement. This provision shall apply and survive the termination of this Agreement.
 - a. If the Encroachment has been removed and the area restored in accordance with Sections 5 or 6, then the Region shall remove the registration of this Agreement from title to the Owner's Lands, within a reasonable period, following the Owner's written request, after the end of the Term. All fees associated with such removal shall be at the Owner's sole cost and expense. This provision shall apply and survive the termination of this Agreement.

7. The Owner agrees and covenants that it will bear all costs associated with the Encroachment. The Owner agrees and covenants that the Encroachment is now in a good and workmanlike condition and in compliance with all municipal by-laws and the laws of the Province of Ontario and shall be maintained in a good and workmanlike condition throughout the Term of this Agreement.
8. The Owner agrees not to hold the Region responsible in any way for any loss, accident, or damage or injury to person or persons on the Region Road resulting from the Encroachment. The Region shall not in any event whatsoever be liable or responsible in any way for any kind of liability, suit, claim, demand, fine, action, or proceeding of any kind for which the Owner, or those for whom they are in law responsible, may become liable or suffer by reason of the Encroachment, including any breach of or non-performance by the Owner of any provision of this Agreement, saving and excepting therefrom the sole gross negligence by the Region, or those for whom it is in law responsible. The Owner agrees to indemnify and save harmless the Region of and from all liabilities, fines, damages, suits, claims, demands, actions, and cost for such actions for which the Region may become liable or suffer by reason of the Encroachment, its use and or removal. Without restricting the generality of the foregoing, the Owner shall indemnify and save harmless the Region of and from all damages to persons or properties as a result of such Encroachment and its use and/or removal. This provision shall apply and survive the termination of this Agreement with respect to any act or omission that occurred during the Term of this Agreement.
9. The Owner agrees that there shall not be any addition, vertically, horizontally or otherwise, to the Encroachment. In the event that the Encroachment is being added to or materially altered, it will be relocated within the Owner's Lands. Upon such removal or relocation, this Agreement will be terminated.
10. The Owner further acknowledges and agrees that, in the event the Region exercises its right to enter onto the Region Road or the widened limits thereof for any type of construction, installation, alteration, removal, replacement, reconstruction, repair, maintenance and/or inspection to the Region Road or any of the Regional infrastructure therein the Region shall not be responsible for repairing or replacing the Encroachment and the Owner shall assume any and all costs and responsibilities relating to the replacement of same.
11. Nothing in the Agreement shall be construed to mean that the Region by virtue of this Agreement has assumed the responsibility of such compliance or any compliance with any municipal by-laws. The Owner covenants to fully comply with any order, by-law, law, regulation, and direction of any lawful authority, including the municipal, provincial, or federal governments or their respective agents with respect to the Encroachment.
12. The parties acknowledge and agree that the rights conferred by this Agreement shall be assignable to any purchaser of the Owner's Lands or to any successor corporation of the Owner, with the prior written consent of the Region, which consent will not be unreasonably withheld provided that any such assignee pays to the Region the appropriate fees for encroachments on Regional Road and further that any such assignee, upon assuming ownership of the Owner's Lands, agrees to assume the obligations of the Owner under this Agreement and provide written notice of such assumption to the Region.
13. In the event that such assignee is a condominium corporation the assignee shall execute the Undertaking and Consent to Registration set out in Schedule "C" herein. The Owner covenants to include full, complete and accurate information within the condominium declaration and disclosure statement as to the obligations contained in this Agreement in accordance with the *Condominium Act, 1998*, S.O. 1998, c.19, as amended.
14. Any notice to be given or document to be delivered to the Owner or the Region shall be sufficiently given or delivered if delivered personally or if sent by facsimile or email transmission or ordinary prepaid mail to the following addresses:

If intended for the Owner, at:

KILLAM APARTMENT SUBSIDIARY LIMITED PARTNERSHIP
50 Westmount Road, Unit 230
Waterloo, ON N2L 6N9

Attention: **Carrie Curtis, Vice President**
519-224-0202
 Email: **ccurtis@killamreit.com**

and if intended for the Region, at:

The Regional Municipality of Peel
10 Peel Centre Drive, Suite B, 6th Floor
Brampton, ON L6T 4B9

Attention: **Manager, Real Property and Facility Acquisitions**
 905-791-7800, Extension 7636

Email: **Lori-Ann.Thomsen@peelregion.ca**
Fax: **905-791-3645**


Or to such other address or fax number or email address as either party may from time to time notify the other. Any notice or other communication given by personal delivery shall be conclusively deemed to have been received by the party to which it is addressed on the day of actual delivery thereof, or if given by Fax or email, on the first business day following the transmittal thereof. Any notice sent by prepaid first class mail shall be deemed to have been delivered on the fifth (5th) business day following the date of mailing thereof provided that the postal services have not been interrupted in which case notice shall only be given by personal delivery by Fax or email as aforesaid.

15. The Owner consents to the registration of this Agreement on the title to the Owner's Lands and shall execute any or all such documents for such purposes.
16. The Owner shall obtain and maintain throughout the Term a comprehensive insurance policy with a minimum liability coverage of FIVE MILLION DOLLARS (\$5,000,000) per occurrence, covering the Encroachment to protect the Owner and the Region, and those for whom the Region is in law responsible, from any and all claims for damages, personal injury including death, and for claims from property damage which may arise from the Owner's use and/or removal or in relation to the Encroachment under this Agreement, including the use or maintenance or removal of the Encroachment or any act or omission of Owner's contractors, agents or employees while engaged in the work of placing, maintaining, renewing or removing the Encroachment, and such coverage shall include all costs, charges and expenses reasonably incurred with any injury or damage. The insurance policy shall extend to cover the contractual obligations of Owner as stated within this Agreement, shall be in the name of the Owner and shall name The Regional Municipality of Peel as an additional insured thereunder. The policy shall provide that it cannot be cancelled, lapsed or materially changed without at least thirty (30) days' notice to the Region by registered mail. Evidence of insurance satisfactory to the Region shall be provided prior to the execution of this Agreement, and annually thereafter.

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17. This Agreement, when executed by the said parties shall constitute a binding agreement.

IN WITNESS WHEREOF the Owner has on the 2 day of June, 2020
affixed its corporate seal attested by the hands of the duly authorized officer(s).

KILLAM KAMRES (SILVER SPEAR) INC.
PER: 
Name: Philip Fraser
Title: President & CEO

PER: _____
Name: *
Title: *

I/We have the authority to bind the Corporation.

IN WITNESS WHEREOF The Regional Municipality of Peel has on the _____ day of _____, 2020 affixed its name under the hands of its signing officers in that behalf.

THE REGIONAL MUNICIPALITY OF PEEL

PER: _____
Name: Aretha Adams
Title: Director and Deputy Clerk

I have the authority to bind the Regional Corporation.

REAL ESTATE TEAM
Regional Municipality of Peel
10 Peel Centre Drive
Brampton, ON L6T 4B9
905-791-7800

Realty File No.: ENC- 20093
Legal File No.: P31616
Date: July 23, 2020
Project #: *
Revision Date: September 24, 2020

SCHEDULE "A" – Legal Description

Schedule "A" forms an integral part of this Agreement between The Regional Municipality of Peel and Killam Kamres (Silver Spears) Inc.

Legal Description:

Part Block B Plan 750 (Formerly Township of Toronto), Parts 1, 5 and 6 Plan 43R-38652;
Subject to an easement over Parts 1 and 6 Plan 43R-38652 as in VS1539; subject to an easement
in favour of Part Block B Plan 750, Parts 11, 12 and 13 Plan 43R-38652 as in PR3448960;
together with an easement over Part Block B Plan 750, parts 11, 12 and 13 Plan 43R-38652 as in
PR3448960; together with an easement over Part Block B Plan 750, Parts 11, 12 and 13 Plan
43R-38652 as in PR3448960; subject to an easement in gross as in PR3589366;
City of Mississauga
Regional Municipality of Peel

SCHEDULE "B" – ADDITIONAL CLAUSES

Schedule "B" forms an integral part of this Agreement between The Regional Municipality of Peel and Killam Kamres (Silver Spear) Inc.

1. The hydro pole shall meet the TAC clear zone requirements and must be a minimum of 0.5 metre offset from sidewalk/multi use trail;
2. The sidewalk is to remain free and clear;
3. Please ensure area is properly fenced off and that there will be no access to the sea container from the Region Road;
4. If applicable, the parties agree that the execution of this Agreement may be facilitated through facsimile or electronic means and/or this Agreement may be executed in several counterparts and any such facsimile or electronic copy and any such counterpart shall be deemed to be an original Agreement, and such facsimile or electronic copies or such counterparts together shall constitute one and the same Agreement and shall have the same force and effect as an executed original.
5. If applicable, the parties agree that the execution of this Agreement by either party may be facilitated through an electronic approvals process (the "Approval Process") whereby an email confirmation is provided by the signing party to the other party to evidence the execution of the Agreement and binds the individual/corporation, which e-mail confirmation shall be attached to this Agreement and shall have the same force and effect as an executed original. Each of the parties shall maintain a record of such electronic documents pursuant to this Approval Process and shall provide an executed copy of the agreement to the other party with a wet signature, within a reasonable time following the termination of the latter of any municipal, provincial, or federal Declaration of Emergency in effect in Peel Region in relation to the COVID-19 pandemic (the "Declaration"). This Approval Process shall apply only to the extent that this Agreement is executed during the period in which the Declaration is in effect.

SCHEDULE "C" – Undertaking and Consent to Registration

Schedule "C" forms an integral part of this Agreement between The Regional Municipality of Peel and *****

To: THE REGIONAL MUNICIPALITY OF PEEL (the "Region")

I/WE _____(the "New Owner")
having received a Transfer/Deed of the lands described in PIN ***** (LT) from *****
(the "Former Owner") HEREBY CONSENT(S) to the registration of:

- I. The Encroachment Agreement (the "Agreement") attached to the said Application made
between the Former Owner and the Region, dated the _____ day of _____, 20__.

The New Owner, in consideration of the Region hereby agreeing to be bound by and to honour the terms of the said Agreement with respect to the New Owner in the same manner as if the New Owner was an original party thereto, and other good and valuable consideration and the sum of Ten (\$10.00) Dollars now paid by the New Owner to the Region, the receipt of which is hereby acknowledged, the New Owner COVENANTS AND AGREES to be bound by and to be subject to the terms of the said Agreement in the capacity of owner as if the New Owner was an original party thereto.

IN WITNESS WHEREOF this Undertaking has been executed by the New Owner this
day of _____, 20__.

Print New Owner Name:

Per: _____c/s
Print Name:
Print Office:

Per: _____c/s
Print Name:
Print Office: