

## **DRAFT Encroachment Agreement**

This Agreement was made on the      day of January, 2026.

BETWEEN:

**The Corporation of the Town of Saugeen Shores**  
(Referred to as the "Town")

and

**Jody Neola Perkins and Charles Lee Perkins**  
(Referred to as the "Licensee")

**WHEREAS** the Licensee is the owner of the lands municipally known as 440 Green St, legally described as PLAN 166 LOT 6 PT LOT 7; Saugeen Shores; hereinafter referred to as the "Parcel A" and described in Schedule "A";

**WHEREAS** the Licensee is the owner of lands, legally described as PLAN 180 PT LOTS 16 AND 17; RP 3R10892 PART 1; Saugeen Shores; hereafter referred to as the "Parcel B" and described in Schedule "A". Parcel A and Parcel B are hereinafter referred to as the "Licensee's Lands".

**WHEREAS** the Town owns the Road Allowance running between Parcel A and Parcel B hereafter referred to as the "Town Lands";

**WHEREAS** the Licensee wishes to enlarge the residential back yard through the installation of a fence.

**WHEREAS** the Licensee is requesting permission from the Town to allow the Encroachments to be located on the Town's Lands.

**NOW THEREFORE IN CONSIDERATION** of the mutual covenants contained in this agreement and other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the parties agree as follows:

### **1. Recitals & Schedules**

- 1) The parties acknowledge and agree that the Recitals are true and form part of this Agreement.
- 2) The parties acknowledge and agree that the Schedules attached hereto form part of this Agreement.

### **2. Definitions**

- 1) "Fixed Encroachment" means the deck located on the Town's Lands which is shown in the reference plan attached as Schedule "A".
- 2) "Non-Fixed Encroachments" means the items that have been placed on the Town's Lands that is not a Fixed Encroachment, as shown in the reference plan attached as Schedule "A".
- 3) "Encroachments" collectively means Fixed and Non-Fixed Encroachments.
- 4) "Licensed Area" means that portion of the Town's Lands on which the Encroachments are or will be located. This area shall be confirmed, identified and legally described by a survey prepared by an Ontario Land Surveyor as per the terms of clause 3.10.

### 3. Encroachment Agreement

- 1) The description of the Licensee's Lands to which the Encroachment Agreement applies is set out in Schedule A attached hereto.
- 2) The Town hereby grants to the Licensee permission (the "Agreement") to place the Encroachment on the Town Lands adjoining to Parcel A and Parcel B and more particularly described in Schedule A attached hereto.
- 3) The Licensee and the Town hereby agree that this Agreement shall cover the Encroachment described herein and this Agreement shall not provide any implied right on the part of the Licensee to alter, reconstruct or otherwise change the conduit approved and installed by the Town.
- 4) Save and except as required to maintain and repair to a safe condition the Encroachments and as otherwise specifically authorized herein, this Encroachment Agreement does not provide any implied right on the part of the Licensee, or its contractors, to disturb the soil or vegetation on or beyond the Licensed Area, unless prior written approval is provided by the Town. The Town has the right to refuse such requests.
- 5) The Town and Licensee hereby agree to the following conditions for the installation of the Encroachment:
  - i. The Licensee shall be responsible for all costs and liability associated with the installation of the Encroachment, including but not limited to the following:
    - a) The Licensee shall be responsible for ensuring all individuals and contractors are insured, qualified and are working in compliance with all legislated requirements, prior to, and while undertaking work on the Licensed Area. The Town at any time has the right to request the Licensee provide written proof that all aforementioned individuals and contractors carry minimum liability insurance of Five Million Dollars (\$5,000,000.00).
    - b) Provide adequate notice to the Town a prior to undertaking any work on Town Land.
  - ii. The Licensee agrees to install gates at each end of Town Lands to allow for access by Town staff, Town contractors or utility companies.
- 2) In the event the Encroachment represents a danger or detrimentally impacts:
  - i. the safety of persons using the Town's Lands ;
  - ii. safety of the public; or
  - iii. the environment;

The Licensee and the Town acknowledge that the Licensee shall have sixty (60) days, unless the Town deems the Encroachments an immediate danger, (save and except in the months of November through March of each year when such time period shall be extended to 120 days) from Licensee's receipt of written notice from the Town specifying the Encroachments causing danger or detrimental impact, the nature of the danger or detrimental impact, and what is required to cure same, to cure the Encroachment(s) in question. If the Licensee fails to cure the Encroachment(s) the Town shall have the right to terminate this Agreement. Notwithstanding anything contained in this clause, the Town may attend and remove and/or repair the Encroachments if the Town deems the danger to be an emergency. Any costs of the Town shall be paid for by the Licensee.

- 3) Nothing in this Agreement shall be construed as giving to the Licensee anything more than a license on the terms and conditions set out in this Agreement. The Licensee agrees that, in the event that the Encroachment is used by any person other than the Licensee or its affiliates (as defined in the Business Corporations Act, R.S.O. 1990, c.B.16, as amended) for any purpose other than directly between the Encroachment and the land, for the sole internal use of the present occupant of the Licensee's Lands, being the Licensee or its affiliates, this Licensee may be terminated immediately by the Town, without compensation to the Licensee, and the Licensee shall, at its sole cost and expense and to the satisfaction of the Town, remove the Encroachment and complete all required remedial work.

#### **4. Licence Fee**

- 1) The Licensee agrees to pay the annual Licence Fee of \$2,108.53 (based on a calculation of \$10.54 per square metre multiplied by the total square metres of the Licensed Area which is 200.05 m<sup>2</sup> in advance upon execution and on each anniversary of the date of this Agreement and any extensions thereof, which will be calculated and increased annually by the percentage increase of the Tax Levy established by the Town's Tax Levy By-law. In the event this Agreement expires or is terminated during a year for which the Licensee has prepaid, the Town shall prorate the fee, and refund the balance owing to the Licensee.
- 2) If, due solely to the presence of the Encroachments, the Town or any public utility company or system incurs any reasonable and documented additional costs in the repair, maintenance, or construction of its facilities or services, the Licensee agrees to pay all reasonable and documented additional costs to the appropriate party, upon sixty (60) days written notice. The decision of the Town, acting reasonably, as to the amount of such additional costs, if any, shall be final and binding.

#### **5. Term**

- 1) The term of this Agreement shall be a fifteen (15) year period commencing \_\_\_\_\_ 2026, and ending \_\_\_\_\_ 2041, (the "Term"), with Licensee having the option to extend the term for an additional period of 5 years with respect to any Fixed and Non-Fixed Encroachments existing at the end of the Term only (the "Option"). The Option shall be exercised by the Licensee delivering written notice to the Town of his intent to extend the Term no later than one hundred and twenty (120) days prior to the end of the Term.
- 2) Notwithstanding the Term in clause 5.1) above, the Licensee acknowledges and agrees that this Agreement may be terminated in whole or in part by the Town at an earlier date in accordance with the terms contained herein.
- 3) Licensee shall have the right to terminate this Agreement at any time upon removal of the Encroachments from the Licensed Area and Providing written notice to the Town of such removal.
- 4) Notwithstanding the Term in clause 5.1) above, the Licensee acknowledges and agrees that the Town may require the Licensee to remove the Non-Fixed Encroachments at any time and for any reason on one hundred and twenty (120) days written notice to do so.

## 6. Covenants

The Licensee agrees to comply with the following covenants:

- 1) To maintain the Encroachments, at its sole cost and expense, in accordance with the Drawings in Schedule "B", as amended from time to time on consent of the Town, and in a state of good order, condition, and repair, to the satisfaction of the Town, acting reasonably. In maintaining, relocating, and removing the Encroachments, the Licensee will comply with all the requirements of the Town.
- 2) To comply at all times with all federal and provincial laws, as well as all municipal by-laws, including any by-laws, orders or other requirements of the Town.
- 3) To repair to the satisfaction of the Town and at its sole cost and expense, any damage caused to the Licensed Area by the construction or maintenance of the Encroachments, and indemnify and save harmless the Town from any and all losses, costs, charges, and expenses which may be paid, incurred or sustained by the Town as a result of any such damage.
- 4) As outlined in Section 9 of this Agreement, to allow for any and all future capital infrastructure projects along the Licensed Area.

## 7. Indemnification

- 1) The Licensee shall defend, indemnify and save harmless the Town, its elected officials, officers, employees and agents from and against any and all claims of any nature, actions, causes of action, losses, expenses, fines, costs (including legal costs), interest or damages of every nature and kind whatsoever, which may be incurred, sustained or paid by the Town as a consequence of, or arising out of, this Agreement and the Encroachments or the exercise by the Licensee of the Licence granted by the Town herein save and except in the case of gross negligence on the part of the Town. The Licensee hereby grants to the Town full power and authority to settle any such actions, suits, claims, and demands on such terms as the Town may deem advisable and hereby covenants and agrees with the Town to pay the Town, on demand, all moneys paid by the Town in pursuance of such settlement and also such sum as shall represent the reasonable costs of the Town or its solicitor in defending or settling any such actions, suits, claims or demands and this Agreement shall not be alleged as a defense by the Licensee in any action by any person of actual damage suffered by reason of the permission hereby granted by virtue of this Agreement. The Licensee agrees that all costs, charges and expenses paid by or incurred by the Town as aforesaid shall form and constitute a charge or lien on the Licensee's Lands until discharged by payment thereof. This indemnity shall be in addition to and not in lieu of any insurance to be provided by the Licensee in accordance with this Agreement and shall survive this Agreement.
- 2) The Licensee shall release and indemnify the Town with respect to all actions, suits, claims and demands which the Licensee, its agents, employees or officers may have against the Town with respect to any damage or injury caused or allegedly caused to the Encroachments or the Licensee, its agents, employees or officers by any act or omission of the Town, its agents, employees or officers, save and except in the case of gross negligence on the part of the Town and/or those for whom it is in law responsible.

## 8. Insurance

- 1) The Licensees agrees that it shall, at its own expense, at all times, cause to be maintained a policy of homeowner liability insurance in all respects, including deductible levels, satisfactory to the Town acting reasonably, with each policy containing Two Million Dollars (\$2,000,000.00) in respect of each occurrence limit of coverage. The said policy of insurance to be underwritten by an insurer licensed to conduct business in the Province of Ontario
- 2) Such comprehensive homeowner liability insurance shall include:
  - a. The Town as an additional named insured;
- 3) If the Town, acting reasonably, requires the amount of insurance coverage increased; if it requires the Licensee to obtain other special insurance or if it requires any policy to be extended in respect of this Agreement, then the Licensees shall obtain such extended, increased or special insurance.
- 4) The Licensees further agrees that the coverage provided by the policy or policies specified in this Agreement will not be changed, amended or cancelled by the Licensee until THIRTY (30) days after written notice of such intended change, amendment or cancellation has been personally delivered to the Town and such change or amendment has been approved.
- 5) The Licensee shall provide evidence of the insurance satisfactory to the Town prior to the execution of this Agreement, and within thirty (30) days of receiving the Town's written request for such evidence not more often than once annually thereafter.

## 9. Removal or Relocation

- 1) If requested by the Town, the Licensee acknowledges and agrees that it will relocate or remove completely the Encroachments to allow for any capital infrastructure projects on and within the Licensed Area.
- 2) In the event the Town requires that the Encroachments be relocated or removed for any reason, including clause 9.1 above, it shall give the following notice to the Licensee ("Notice Period"):
  - a. In the case of a Non-Fixed Encroachment, sixty (60) days written notice; and
  - b. In the case of a Fixed Encroachment, one hundred and twenty (120) days written notice.

The Town covenants and agrees that so long as the Licensee is not in default under this Agreement, it will not give notice to the Licensee to remove the Fixed Encroachments during the Notice Period save and except if for the purposes cited in clause 9.1 above.

- 3) Upon receipt of a notice in clause 9.2 above, the Licensee shall relocate or remove the Encroachments. The Licensee agrees not to make any claim against the Town on account of the relocation or removal and will complete the Remedial Work to the satisfaction of the Town acting reasonably. If the Licensee neglects, refuses or fails to relocate or remove the Encroachments and complete the Remedial Work within the time specified in the notice, then the Town may relocate or remove the Encroachments, complete the Remedial Work and charge the reasonable and documented costs of same to the Licensee. With respect to any such costs incurred by the Town, the certificate of the Town together with copies of all related and receipted invoices shall be final, and the Town may recover such costs from the Licensee in any court of competent jurisdiction as a debt owing by the Licensee to the Town.

## 10. Lien

All costs, charges, and expenses paid or incurred by the Town as set out in this Agreement, save and except those incurred as a result of the Negligence Exception shall form and constitute a charge or lien on the Licensee's Lands until fully discharged by payment. The Town shall, upon the receipt of a request from a lender of the Licensee, forthwith provide confirmation as to the amount of any moneys owed under the lien created pursuant to this agreement. In addition to any other remedy available to the Town, the Town may recover such costs in a like manner as taxes assessed on the land.

## 11. Assumption of Obligations

- 1) The Licensee shall not transfer or convey or enter into an agreement of purchase and sale for the Licensee's Lands, or any part of the Licensee's Lands, or enter into any other agreement or lease, which has or could have the effect of granting the use of or right in the Licensed Area, or any portion of the Licensed Area, directly or by entitlement to renewal for a period of 21 years or more, without providing the Town with written notice of the name and address of the purchaser of such rights.
- 2) Upon completion by Licensee of the transfer or conveyance of its interest in the Licensee's Lands to a new transferee the Licensee shall be released from the terms of this Agreement and shall have no further obligations or liabilities under this Agreement.
- 3) Notwithstanding the foregoing paragraph, the Licensee shall continue to be responsible for all of its obligations under this Agreement which are determined by a Court of competent jurisdiction to have arisen prior to the date of such release.

## 12. Registration

The Licensee hereby consents to the registration of this Agreement together with any schedules hereto, upon the title to the Licensee's Lands and the Town's Lands, if deemed applicable by the Town, and by signing this Agreement hereby authorizes the Municipality's Solicitor to register this Agreement in the Bruce County Land Registry Office (LRO#3) without the necessity of a signed Acknowledgment and Direction. The Town will have the Agreement registered upon title and any costs associated with the said registration shall be paid for by the Licensee as well as any further costs incurred by the Town as a result of the registration of any other documents pertaining to this Agreement.

## 13. Fees/Costs

Any and all fees and costs associated with the preparation of this Encroachment Agreement, as well as any costs referred to herein or incurred by the Town with respect to this Agreement and/or the Encroachments referred to herein shall be paid for by the Licensee within thirty (30) days of receipt of an invoice from the Town. The parties acknowledge and agree that service of any invoices can be sent by the Town to the Licensee via email transmission to the email address noted in Section 14 below, as amended from time to time. The failure of the Licensee to pay an invoice within the time period stipulated herein shall constitute default under the terms of this Agreement. Interest will accrue on any outstanding balances at the rate of prime plus 2% from the date of the invoice until paid in full.

## 14. Notice

- 1) Any notice required or permitted to be given under this Agreement shall be in writing and shall be served personally, or sent by prepaid registered mail addressed as follows:

**In the case of the Town:**  
600 Tomlinson Drive, Box 820,  
Port Elgin, Ontario N0H 2C0

Attention: Clerk  
Email: [clerk@saugeenshores.ca](mailto:clerk@saugeenshores.ca)

**In the case of the Licensee:**

Jody and Charles Perkins  
PO BOX 1949,  
PORT ELGIN ON N0H 2C0

- 2) Any party may from time to time change its address and recipient for service by notice to the other party in the manner previously set out.
- 3) Notices which are served in the manner set out in clause 14.1 shall be deemed sufficiently given for all purposes of this Agreement, in the case of those personally served, on the date of such service, and in the case of registered mail, on the third postal delivery day following the mailing of the notice. Should normal mail service be interrupted by strikes, slowdown or other cause, then the party sending the notice shall use any similar service which has not been so interrupted in order to secure prompt receipt of the notice, request or demand and for the purposes of this Agreement such service shall be deemed to be personal service.

**15. General**

- 1) Subject to Section 11 of this Agreement, this Agreement and everything contained in this Agreement shall respectively enure to the benefit of and be binding upon the parties and their respective heirs, executors, administrators, successors and assigns.
- 2) If any provision of this Agreement or the application to any party or circumstance is restricted, prohibited or unenforceable, such provisions shall, as to such jurisdiction, be ineffective only to the extent of such restriction, prohibition or unenforceability without invalidating the remaining provisions hereof and without affecting the validity or enforceability of such provisions in any other jurisdiction or its application to other parties or circumstances.
- 3) This Agreement may be executed and delivered by counterparts with the same effect as if the parties hereto have signed and delivered the same document. All counterparts shall be construed together and shall constitute one and the same Agreement. Any delivery of an executed copy of this Agreement by way of telecopy, facsimile or email transmission shall constitute delivery hereof.
- 4) No waiver or modification of any provision of this Agreement is binding unless it is in writing and signed by all the Parties to this Agreement. No failure to exercise, and no delay in exercising any right or remedy under this Agreement will be deemed to be a waiver of that right or remedy. No waiver of any breach of any provision of this Agreement will be deemed to be a waiver of any subsequent breach of that provision.
- 5) The Parties hereto agree to execute and deliver any further documents or assurances necessary or desirable to give effect to the permission hereby granted.
- 6) This Agreement shall be governed by and interpreted in accordance with the laws of Ontario and the federal laws of Canada applicable in Ontario.

SIGNATURE PAGE TO FOLLOW

**In Witness Whereof** the parties have set their hands and corporate seals attested by the hands of their respective officers duly authorized in that behalf.

**The Corporation of the Town of Saugeen Shores**

\_\_\_\_\_  
Per:  
Title: Director of Development Services

I have the authority to bind the Corporation.

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Jody Neola Perkins

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Charles Lee Perkins

