

**THE CORPORATION OF THE TOWNSHIP OF WOLLASTON**

**BY-LAW NO. 09-2021**

Being a By-Law authorizing execution of an Encroachment Agreement between The Corporation of the Township of Wollaston and Margaret Anne Hern

**WHEREAS** Section 9 of the *Municipal Act*, 2001 provides the municipality with the powers of a natural person for the purpose of exercising its authority under this or any Act;

**AND WHEREAS** Council deems it necessary to enter into an Encroachment Agreement pursuant to Consent File No.: B52/20 issued through the County of Hastings;

**NOW THEREFORE** the Council of the Township of Wollaston hereby enacts as follows:

1. That the Mayor and the Clerk be and are hereby authorized to execute an Encroachment Agreement with Margaret Anne Hern under the terms and conditions set out in said agreement hereto annexed and forming part of this By-Law.
2. This By-Law shall come into force and take effect immediately upon the passing thereof.

**PASSED this the 11<sup>th</sup>, day of January 2021.**

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**MAYOR: LYNN KRUGER**

**SEAL**

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**CLERK: BERNICE CROCKER**

## **AGREEMENT**

B E T W E E N:

### **THE CORPORATION OF THE TOWNSHIP OF WOLLASTON**

(hereinafter called the "**Township**")

PARTY OF THE FIRST PART

- and -

### **MARGARET ANNE HERN**

(hereinafter called the "**Licensee**")

PARTY OF THE SECOND PART

#### **WHEREAS:**

- (a) The Licensee owns certain lands located at Lots 29 & 30, Concession 14, Township of Wollaston, County of Hastings being more particularly described in Schedule "A" attached hereto;
- (b) The Licensee also owns certain lands located at Lots 31 & 32, Concession 14, Township of Wollaston, County of Hastings;
- (c) The Township owns the unopened road allowance between Lots 30 and 31, Concession 14, Township of Wollaston, County of Hastings;
- (d) The Licensee has constructed a right-of-way located in Lots 31 and 32, Concession 14 that also encroaches over the unopened road allowance between Lots 30 and 31, Concession 14 (the "Encroachment") to access her lands located at Lot 29 and 30, Concession 14, Township of Wollaston, County of Hastings;
- (e) The Licensee has applied to the Hastings County Land Division Office for a severance of her lands located on Lot 30 from her lands located on Lot 29;
- (f) The Hastings County Land Division Office requires that any Consent to a severance of the lands located on Lot 30 is conditional on a new right-of-way being created across the lands on Lot 29, rather than continued use of the unregistered right of way across Lots 31 and 32 and the unopened road allowance between Lots 30 and 31;
- (g) The new right-of-way across Lot 29 shall be the only registered legal access to the lands located on Lot 30;
- (h) The Township has agreed to acknowledge the existing Encroachment across the road allowance between Lots 30 and 31, subject to the execution of this Encroachment Agreement and the terms thereof.

**IN CONSIDERATION** of other good and valuable consideration and the sum of \$2.00 of lawful money of Canada now paid by the Licensee to the Township (the receipt of which is hereby acknowledged) the Township

grants, subject to the provisions set forth, to the Licensee, a licence to permit the Encroachment upon the lands of the Township subject to the following provisions:

1. The Licensee acknowledges that there is no registered legal access to the lands located on Lot 30 via the lands located on Lots 31 and 32, nor via the Encroachment.
2. The Licensee shall, at its own cost, charge and expense and to the satisfaction of the Public Works Manager or such other person as the Township may designate in writing:
  - (a) keep and maintain the Encroachment in a good and proper state of repair and safety;
  - (b) make no additions or modifications to the Encroachment which are not authorized or contemplated by this agreement;
  - (c) comply with such further and additional requirements, as may be required by the Public Works Manager; and
  - (d) enter into a Right-Of-Way Agreement with the Municipality with respect to the new right-of-way across the lands on Lot 29.
3. The Licensee shall at all times fully indemnify and save harmless the Township against all actions, suits, claims and demands whatsoever which may be brought against or made upon the Township and from and against all loss, costs, damages, charges and expenses whatsoever which may be incurred, sustained or paid by the Township for or by reason of or on account of the permission hereby granted to the Licensee or the exercise by the Licensee of such permission or the erection and maintenance of the Encroachment and appurtenances thereto or anything in any matter relating thereto. The Licensee grants to the Township full power and authority to settle any such actions, suits, claims or demands on such terms as the Township may deem advisable and the Licensee covenants and agrees with the Township to forthwith pay to the Township on demand all moneys paid by the Township in pursuance of any such settlement and such sum as shall represent the reasonable costs of the Township or its solicitors in defending or settling any such actions, suits, claims or demands, based on a solicitor and own client basis.
4. Where, in the opinion of the Public Works Manager, it is necessary to remove or alter the Encroachment or part thereof, the Licensee shall, at its own cost, charge and expense, and to the satisfaction of the Public Works Manager, alter or remove the Encroachment or any part thereof from the Road, and restore the affected area upon receiving notice in writing from the Clerk-Administrator so to do, without being entitled to any compensation whatsoever for such alteration or removal and restoration. If the Licensee neglects, refuses or fails so to do with sixty (60) days of receiving the aforesaid notice to alter or remove, then the Township may alter or remove the Encroachment or parts thereof from the Road at the cost, charge and expense of the Licensee and the certificate of the Clerk-Administrator as to the cost of such alteration or removal and restoration shall be final and binding upon the Licensee and the Township may recover such costs from the Licensee in a like manner as taxes.

5. Nothing contained in this agreement shall be construed as giving to the Licensee anything more than permission to maintain the Encroachment until such time as this agreement expires or is terminated or the removal of such Encroachment may be required as provided.
6. The parties acknowledge and agree that no length of time of, or enjoyment by the Licensee of the permission granted in this agreement shall enure to, or give any right, title or interest to the Licensee or its successors in title, in the Road or any right to maintain the proposed Encroachment over, under or upon the Road, or shall deprive the Township by the operation of any limitation period or otherwise of any right to require the removal of the Encroachment.
7. The Licensee covenants and agrees that the right-of-way over the unopened road allowance shall not be gated or obstructed by the Licensee.
8. The Licensee covenants and agrees that at the time the Encroachment is removed in whole or in part, or is in need of replacement, the works formerly comprising such Encroachment shall be removed, at the Licensee's sole expense, so that they are located entirely off the unopened road allowance and at such time, this agreement shall become null and void and be of no further effect.
9. The parties acknowledge and agree that this Licence does not in any way whatsoever diminish the rights of the Township, or any gas, telephone, cable, municipal electricity company or other public utility company, their respective officers, servants, workers, employees, agents and contractors, to enter at all times upon the Road for the purpose of constructing, repairing, maintaining, replacing or removing any sewers, mains, culverts, drains, water pipes, gas pipes, poles, wires or other underground services and installations and appurtenances thereto. The Licensee shall not be entitled to any damages or compensation by reason of the exercise of the Township's or utility company's rights contained in this clause and the Licensee at its own expense shall carry out such alteration or removal of the Encroachment as the Public Works Manager may direct pursuant to the exercise of the Township's or utility company's rights.
10. The Licensee agrees that any and all costs, sums and expenses paid, incurred or sustained by the Township as provided in this agreement shall form and constitute a charge or lien on the Lands, until fully paid.
11. The Licensee agrees that for the purpose of this agreement, notice may be given to the Licensee by mailing the same, by prepaid registered mail, addressed to the Licensee at the mailing address for the Lands. Such notice shall be deemed to have been received by the Licensee five (5) days following the date when it was handed to the post office.
12. The Licensee agrees to pay to the Township prior to the execution of all administration fees and all costs of preparing, registering and administering this agreement.

13. The Licensee consents to the registration of this agreement against the title to the Lands.

14. This agreement and everything herein contained shall run with the Lands, and enure to the benefit of and be binding upon the parties, their heirs, executors, administrators, successors and assigns.

**IN WITNESS WHEREOF** the parties hereto have hereunder set their hands and seals the day and year first above written, and the corporate parties hereto have hereunto affixed their corporate seals by the hands of their proper officers duly authorized in that behalf.

<b>SIGNED, SEALED &amp; DELIVERED</b>	)	<b>THE CORPORATION OF THE</b>
in the presence of	)	<b>TOWNSHIP OF WOLLASTON</b>
	)	
	)	
_____	)	_____
Witness	)	MAYOR: LYNN KRUGER
	)	
	)	_____
	)	CLERK: BERNICE CROCKER
	)	We have the authority to
	)	bind the Corporation
	)	_____
	)	Date
	)	
	)	
<b>SIGNED, SEALED &amp; DELIVERED</b>	)	
in the presence of	)	
	)	
	)	
_____	)	_____
Witness	)	Owner: MARGARET ANNE HERN
	)	
	)	_____
	)	Date

**SCHEDULE "A"**

**PROPERTY DESCRIPTION**

Part of the Road Allowance Between Lots 30 and 31, Concession 14, Wollaston,  
being Part 1 on Plan 21R-\_\_\_\_\_.