

ENCROACHMENT AGREEMENT

This Agreement is made this [x] day of [x], 2022.

BETWEEN:

THE CORPORATION OF THE TOWN OF ERIN
("Town")

and

ANDREA DORT
("Owner")

RECITALS:

- A. The Owner is the registered owner of the lands legally described as Part Lot 1 Plan 278, being Part 1 on Plan 61R1633; Erin, being all of PIN 71153-0048 (LT) hereinafter called ("Owner Lands").
- B. The Town is the registered owner of a municipal road legally described as Ross Street, Plan 278 Erin Village; Erin, being all of PIN 71153-0137 (LT), ("Town Lands").
- C. A portion of the house situated on the Owner Lands encroaches on the Town Lands to the extent shown as the portion of the hatched area located on the Ross Street road allowance on reference plan 61R-1633 ("Encroachment"), a copy of which is attached as Schedule "A".
- D. The Town has agreed to pass a by-law and grants to the Owner permission to maintain the Encroachment upon the condition that the Owner enters into and executes this agreement ("Agreement").
- E. Section 8 of the *Municipal Act, 2001*, S.O. 2001, c. 25 ("*Municipal Act*") provides that a municipality has the capacity, rights, powers and privilege of a natural person for the purpose of exercising its authority under that Act.

IN CONSIDERATION of the sum of Two Dollars (\$2.00), plus HST, to be paid upon execution of this Agreement by the Owner the parties agree as follows:

PART 1 - INTERPRETATION

1.1 Headings

The headings inserted in this Agreement are inserted for convenience only and are not to be used as a means of interpreting this Agreement.

1.2 Singular, Etc.

The use of words in the singular or plural, or with a particular gender, will not limit the scope or exclude the application of any provision of this Agreement to such party or circumstances as the context otherwise permits.

1.3 Lists

Whenever a statement or provision in this Agreement is followed by words denoting inclusion or examples followed by a list of or reference to specific items, such list or reference will not be read as to limit the generality of that statement or provision,

even if words such as “without limiting the generality of the foregoing” do not precede such list or reference.

1.4 Reference to Statutes

References herein to any statute or any provision thereof include such statute or provision thereof as amended, revised, re-enacted and/or consolidated from time to time and any successor statute thereto.

1.5 Owner's Expense

Every provision of this Agreement, which the Owner is obligated to complete, is deemed to include the words “at the expense of the Owner” and “to the Town’s satisfaction, acting reasonably” unless specifically stated otherwise.

1.6 Schedules

Schedules attached to this Agreement form part of this Agreement and have the same force and effect as if the information on them were contained in the body of this Agreement.

PART 2 - ADMINISTRATION

2.1 Term

The Town permits the Owner to maintain the Encroachment on the Town Lands until such time as the portion of the Town Lands that the Encroachment is situated on is required for the purposes of a municipal road widening. In the event that the Town requires the Encroachment to be removed, the Town shall provide the Owner with One Hundred and Eighty (180) days’ written notice.

2.2 Applicable Law

Nothing in this Agreement relieves the Owner from compliance, or transfers compliance responsibility to the Town, with all applicable municipal by-laws, orders, regulations established by any other governmental body which may have jurisdiction over the Owner, Owner Lands and Town Lands.

2.3 No Change in Encroachment

There shall not be any addition, vertically or horizontally to the Encroachment, without first receiving the Town’s consent and that change of the Encroachment shall be allowed only if the Owner complies with all applicable by-laws, regulation and legislation.

2.4 Registration of Agreement

The Town may register this Agreement in the Land Registry Office against title to the Owner Lands and the Owner shall pay the Teraview registration fee and the Town’s legal fees incurred in connection with the registration.

2.5 Notice

Where this Agreement requires notice to be delivered by one party to the other, such notice must be in writing and delivered either personally, by facsimile transmission

or by courier from one party to the other at their addresses noted below. Such notice will be deemed to have been given, if by personal delivery on the date of delivery, and if by facsimile transmission on date of delivery with electronic confirmation of receipt obtained, and if by courier on the 4th business day following the sending thereof. Saturdays, Sundays and statutory holidays are excluded for notice purposes.

Town:

The Corporation of the Town of Erin
5684 Trafalgar Rd.
Hillsburgh, ON N0B 1Z0

Attention: Town Clerk

E-mail: clerks@erin.ca

Owner:

2 Ross Street
Erin, ON N0B 1T0

Email: andreajdort@gmail.com

Addresses may be changed by written notice to the parties.

2.6 Assignment

This Agreement shall not be assignable to any party without the Town's written consent, provided that this Agreement shall run with title to the lands such that future owners of the Owner Lands will be bound by, and entitled to rely upon, the provisions hereof.

2.7 Entry by Town

The Town, its officers, servants, agents and contractors have the right during normal business hours to enter on the Owner Lands, with all necessary workers, machinery, equipment and materials to inspect, alter or remove the Encroachment in accordance with this Agreement upon 48 hours' notice. Inspection shall not relieve the Owner from liability to maintain the Encroachment in good repair.

2.8 Limitation

The Owner acknowledges that the execution of this Agreement by the parties does not give the Owner any greater rights than the right of permission to maintain the Encroachment in compliance with this Agreement.

2.9 Extension of Time

Time is of the essence in this Agreement. Any time limits specified in this Agreement may be extended with the consent in writing of both parties, but no such extension of time will operate or be deemed to operate as an extension of any other time limit, and time will be deemed to remain of the essence in this Agreement, notwithstanding any extension of any time limit.

2.10 Tenancy Not Implied

The Parties agree that nothing in this Agreement shall be deemed to set up a tenancy by implication or otherwise.

PART 3 – FINANCE

3.1 Maintenance

The Owner will, at its own cost, and to the satisfaction of the Town, keep the Encroachment in good repair, failing which the Town shall have the right but not the obligation to do so at the Owner's expense. The Owner agrees to remove or remedy any hazardous matter or condition arising out of the use of the Encroachment pursuant to this Agreement. Failure to comply with this condition may result in written notice to the Owner to remove the Encroachment on Sixty (60) days' written notice, without payment of damages or compensation.

3.2 Town Administrative and Town Consultants' Costs

- (a) The Owner shall pay all of the Town's administrative, planning, legal fees and any other fees associated with this Agreement up to a maximum of \$5,500.00. The Owner further acknowledges and agrees that the Owner is responsible to pay for the actual costs incurred by the Town for any work performed in preparing, administering, enforcing, registering and removing this Agreement.
- (b) Accounts will be submitted to the Owner for payment for all amounts noted above. Accounts are to be paid within Thirty (30) days of receipt.

3.3 Intentionally Deleted

PART 4 - REMEDIES

4.1 Terminating the Agreement

- (a) Notwithstanding anything else contained herein, this Agreement may be cancelled at any time in accordance with the following:
 - (i) by the Owner upon Sixty (60) days written notice to the Town; or
 - (ii) by the Town upon One Hundred and Eighty (180) days written notice to the Owner in the event the Town requires the portion of the Town Lands that the Encroachment is situated for the purposes of a municipal road widening
- (b) At such time as this Agreement is terminated by the Town or the Owner, or due to the expiry of the Term, the Owner shall remove the Encroachment from the Town Lands, at the Owner's expense, to the satisfaction of the Town. The Owner shall not make any claims or demands for any costs or damages as a result of an early termination in accordance with the terms of this Agreement
- (c) Should the Owner fail to remove the Encroachment within the respective time periods referred to in paragraph 4.1(a), the Town may take all reasonable steps to remove the Encroachment from the Town Lands and the Owner shall reimburse the Town for all costs incurred by the Town in this connection.

- (d) In the event that the Encroachment is materially altered without the Town's written consent, this Agreement may be terminated by the Town.
- (e) The Owner shall not 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 in accordance with the terms of the Agreement

4.2 Indemnity

The Owner shall indemnify and save harmless the Town, its elected officials, officers, employees, agents or contractors, from:

- (a) all actions and proceedings arising from the Owner pursuant to this Agreement;
- (b) the exercise by the Owner of permission to maintain the Encroachment; and
- (c) the maintenance of the Encroachment.
- (d) all damage or injury to persons or property; and
- (e) anything relating to the subject matter of this Agreement.

If any action or proceeding is brought against the Town or any of its elected officials, officers, employees, agents, or contractors, the Town may, on written notice to the Owner, and, if not forbidden by the Owner, within Fourteen (14) days, settle any action or proceeding on such terms as the Town sees fit, and the Owner shall forthwith pay the Town the sum to be paid together with a further sum representing the Owner's reasonable costs in defending or settling any action or proceeding. If the Owner forbids settlement within the period, or if no settlement is reached, then the Owner may be made party to any action or proceeding and will indemnify the Town, its elected officials, officers, employees, agents and contractors. These provisions shall apply and survive the termination of this Agreement with respect to any act or omission which occurred during the Term of this Agreement.

4.3 Municipal Act

Any action taken by the Town or on its behalf pursuant to this Agreement shall be in addition to and without prejudice to any security or other guarantee given on behalf of the Owner for the performance of their covenants and Agreements herein and upon default on the part of the Owner hereunder, the Town shall, in addition to any other remedy available to it, be at liberty to utilize the provisions of the *Municipal Act*, including, but not limited to sections 349 and 398.

PART 5 - GENERAL

5.1 No Fettering of Discretion

Notwithstanding any other provision of this Agreement, none of the provisions of this Agreement, including a provision stating the parties intention, is intended to operate, nor shall have the effect of operating, in any way to fetter either the Town Council that authorized the execution of this Agreement or any of its successors councils in the exercise of any of Town Council's discretionary powers, duties or authorities. The Owner hereby acknowledges that they will not obtain any advantageous

planning, servicing, financial or other consideration or treatment by virtue of having entered into this Agreement or by virtue of the existence of this Agreement.

5.2 Agreement Not to be Called into Question

The Owner will not call into question, directly or indirectly, in any proceeding or action in court, or before any administrative tribunal, the Town's right to enforce this Agreement. The law of contract applies to this Agreement and the parties are entitled to all remedies arising from it. Adequate consideration has flowed from each party to the other in relation to this paragraph and that the terms of this paragraph are not severable by either party. The Owner shall not take the benefit of this Agreement and allege entitlement to any greater rights than as set out in this Agreement. The provisions of this paragraph may be pleaded by either party in any action or proceeding as an estoppel of any denial of such right.

5.3 Enforceability

If any provision of this Agreement is found by a Court of competent jurisdiction to be unenforceable, it will not affect the enforceability of each and every other clause contained herein.

5.4 Governing Law

This Agreement is governed by and will be construed in accordance with the laws of the Province of Ontario and treated in all respects as an Ontario contract.

5.5 Waiver

The Town shall be at liberty, in its sole discretion, to waive any or all of the provisions of this Agreement and that such waiver shall not affect in any way the enforceability of this Agreement.

5.6 Entire Agreement

This Agreement shall constitute the entire Agreement between the parties and the parties further acknowledge that there is no representation, warranty, collateral Agreement or adverse condition affecting this Agreement other than as expressed herein in writing.

5.7 Further Assurances

The parties shall do or cause to be done all acts and things and shall execute or cause to be executed all such documents, Agreements and other instruments as may reasonably be necessary or desirable to give effect to the full intent and meaning of this Agreement.

5.8 Counterparts

This Agreement may be executed and delivered in any number of counterparts each of which when executed and delivered is an original but all of which taken together constitute one and the same instrument. The delivery of an executed counterpart copy of this Agreement by facsimile will be deemed to be the equivalent to delivery of an original executed copy.

5.9 Effective Date

This Agreement is effective as of [insert date].

5.10 Binding

This Agreement shall inure to and be binding upon the Owner’s heirs, successors, administrators and assigns, and runs with the lands such that future Owners will benefit from and be bound by this Agreement and prior Owners released from this Agreement following the transfer of title and assumption by the future Owners of the obligations under this Agreement.

(The balance of this page is intentionally left blank; signature page follows)

This Agreement is executed as of the date first written above.

**THE CORPORATION OF THE
TOWN OF ERIN**

Per: _____
Name:
Title:

Per: _____
Name:
Title:

SIGNED, SEALED AND DELIVERED)
In the presence of:)
)
)

Witness
Print Name:

Andrea Dort

SCHEDULE "A"

SURVEY