

**THIS LICENSE MADE EFFECTIVE** this \_\_ day of \_\_\_\_\_, 2016.

**BETWEEN:**

**COUNTY OF ST. PAUL NO. 19**  
(hereinafter called the "Grantor")

- and -

**RONALD McCONNELL and DARLENE SANDBOE**  
(hereinafter collectively called the "Owner")

**ENCROACHMENT LICENSE**

**WHEREAS:**

**A.** The Owner is the registered owner of the lands legally described as follows:

PLAN 4223MC  
BLOCK 5  
LOT 12  
EXCEPTING THEREOUT ALL MINES AND MINERALS

(hereinafter referred to as the "**Owner's Lands**");

**B.** The Grantor is the registered owner of the lands legally described as follows:

PLAN 4223MC  
BLOCK 5  
LOT R5 (COMMUNITY RESERVE)  
CONTAINING 0.99 OF AN ACRE, MORE OR LESS  
EXCEPTING THEREOUT ALL MINES AND MINERALS

(hereinafter referred to as the "**Grantor's Lands**");

**C.** The Grantor has control and management of the open road allowance located along the south boundary of the Owner's Land, which road allowance is known as 3<sup>rd</sup> Street (hereinafter referred to as the "**Road Allowance**");

**D.** The Owner has constructed a moveable shed on the Owner's Lands, a portion of which encroaches upon the Grantor's Lands (such encroaching portion is hereinafter referred to as the "**Reserve Encroachment**");

**E.** The Owner has constructed a moveable shed on the Owner's Lands, a portion of which encroaches upon the Road Allowance (such encroaching portion is hereinafter referred to as the "**Road Encroachment**"); and

**F.** The Grantor is prepared to grant an Encroachment License to permit the Reserve Encroachment and Road Encroachment (collectively, the "**Encroachments**") to exist upon or over a portion of the Grantor's Lands and the Road Allowance, subject to the terms and conditions contained within this Agreement.

**NOW THEREFORE THIS AGREEMENT WITNESSETH THAT** in consideration of the payment of \$1.00 paid by the Owner to the Grantor, the receipt of which is hereby acknowledged, and in consideration of the mutual covenants and agreements contained herein, the Grantor and the Owner hereby agree as follows:

### **GRANT OF ENCROACHMENT LICENSE**

1. The Grantor hereby grants to the Owner an Encroachment License to permit the Encroachments to exist upon or over the Grantor's Lands and the Road Allowance in the manner and location as is shown in red on the Surveyor's Certificate which is attached hereto as **Schedule "A"** to this Agreement, subject to the terms, covenants and conditions contained within this Agreement. The Owner shall not enlarge, extend or modify the Encroachments beyond the size and location shown within Schedule "A" to this Agreement.
2. The Owner acknowledges and agrees that their license to encroach upon or over the Grantor's Lands and/or the Road Allowance granted under this Agreement shall not confer upon the Owner any exclusive right whatsoever with respect to the use or occupation of the Grantor's Lands and/or the Road Allowance, and that the Owner shall have no claim to the Grantor's Lands and/or the Road Allowance other than as herein provided.
3. The Owner acknowledges and agrees that the rights of the Owner are only personal in nature, and that nothing contained within this Agreement shall be interpreted so as to confer upon the Owner any legal or equitable estate or interest in the Grantor's Lands and/or the Road Allowance.
4. The Owner shall not register this Agreement by way of Caveat or otherwise against the title to the Grantor's Lands, the Owner's Lands or the Road Allowance.

### **TERM AND TERMINATION**

5. Subject to the earlier termination of this Agreement due to breach of contract or as otherwise provided for herein, the term of this Agreement shall commence upon the effective date hereof, and terminate on the earlier of:
  - (a) the complete removal or destruction of the Encroachments; or
  - (b) the date which falls 60 days from the date of the written notice provided by the Grantor to the Owner advising that this Agreement has been terminated by the Grantor.
6. Notwithstanding Section 5 hereof, the Grantor shall be entitled to terminate the Road Encroachment upon 30 days' written notice to the Owner, as required pursuant to Section 13(1)(o) of the *Traffic Safety Act*.
7. In the event that the Encroachments at any time after the effective date hereof are destroyed or removed from the Grantor's Lands and/or the Road Allowance:
  - (a) this Agreement shall automatically terminate, save and except for those terms which survive termination, and all rights and privileges granted to the Owner pursuant to the terms of this Agreement shall immediately expire; and
  - (b) the Encroachments, or any structure constructed as a replacement for the Encroachments, shall not be replaced or rebuilt upon the Grantor's Lands and/or the Road Allowance.
8. In the event that the Encroachments are only partially destroyed, the rights and privileges granted to the Owner pursuant to the terms of this Agreement shall expire with respect to the partially destroyed portion of the Encroachments, if in the sole discretion of the Grantor, it is unreasonable for the Owner to rebuild the partially destroyed portion of the Encroachments having regard to the nature of the structure, and the extent and nature of the damage.
9. Notwithstanding anything contained within this Agreement, this Agreement and all rights and privileges granted to the Owner will immediately terminate upon the transfer of title to the Owner's Lands to any individual, person, or corporation other than the original parties to this Agreement. Furthermore, the Owner shall not, without the prior written consent of the Grantor, assign, convey, or in any way part with this Agreement or any of the rights and privileges granted pursuant to this Agreement.

### **REMOVAL AND RECLAMATION**

10. Upon the termination of the rights and privileges granted to the Owner pursuant to the terms of this Agreement, the Owner shall:
- (a) remove the Encroachments from the Grantor's Lands and/or Road Allowance; and
  - (b) attend to the repair and reclamation of the Grantor's Lands and/or the Road Allowance to the reasonable satisfaction of the Grantor.

The Owner's obligations under this Section 10 shall survive the termination of this Agreement for any reason whatsoever, and shall remain binding upon the Owner until all such obligations are satisfied in full.

### **MAINTENANCE EASEMENT**

11. In conjunction with the Grantor's grant of the right of encroachment as contained within this Agreement, the Grantor hereby grants to the Owner the right, license, privilege and easement across, over, under, and upon the Grantor's Lands and the Road Allowance as is reasonably required in order to allow the Owner to inspect the condition of the Encroachments, and to attend to routine maintenance and repairs of the Encroachments.
12. The Owner's right to enter upon the Grantor's Lands and/or the Road Allowance for the purposes permitted within Section 10 above are subject to the reasonable restrictions and limitations imposed from time-to-time by the Grantor, in its sole discretion, that are necessary to minimize disruption of the Grantor's use and enjoyment of the Grantor's Lands and/or the Road Allowance, and minimize damage to the Grantor's Lands and/or the Road Allowance.
13. The Owner shall maintain and repair the Encroachments in a good and workmanlike manner, having regard to the nature of the Encroachments and the structure constituting the Encroachments, the nature and condition of the Grantor's Lands and/or the Road Allowance, and the nature and extent of the encroachment upon the Grantor's Land and/or the Road Allowance.
14. The Owner shall be responsible for the repair and restoration of the Grantor's Lands and/or the Road Allowance after each and every entry upon the Grantor's Lands pursuant to the rights of easement granted within Section 11 above.

### **LIABILITY**

15. The Owner shall indemnify and hold harmless the Grantor, its councillors, officers, employees, agents, servants, contractors, franchisees and licensees from and against any and all claims, damages, costs (including, without restriction, all legal and other professional costs on a solicitor and his own client full indemnity basis), losses, expenses, actions and suits of every kind and nature caused by, or arising directly or indirectly out of the existence of the Encroachments, the exercise or purported exercise of any of the rights granted within this Agreement, or by reason of any matter or anything done, permitted or omitted to be done by the Owner or its heirs, executors, administrators, successors and permitted assigns, and whether occasioned by negligence or otherwise.
16. The Owner hereby assumes, and shall remain responsible for all risk of personal injury and damage to all real or personal property, including the Owner's property comprising the Encroachments, arising out of the presence of the Encroachments upon the Grantor's Lands and/or the Road Allowance, regardless of how such injury or damage is caused.
17. The Owner shall be responsible for, and shall pay upon demand to the Grantor:
- (a) the cost of repairing any damage to the Grantor's Lands and/or the Road Allowance caused directly or indirectly by the Encroachments. Without restricting the generality of the foregoing, the Owner shall be responsible for the repair and restoration of any structures or chattels damaged by the Owner,

or its agents, employees, contractors or invitees as a result of the exercise or purported exercise of any of the rights granted within this Agreement;

- (b) all costs incurred in removing or altering the Encroachments if not performed as and when required under this Agreement; and
  - (c) any additional costs incurred by the Grantor in maintaining the Grantor's Lands and/or the Road Allowance caused directly or indirectly by the Encroachments, including without limitation hand labor, and variations to standard construction methods as needed.
18. The Owner's obligations under Sections 15, 16 and 17 above shall survive the termination of this Agreement for any reason whatsoever, and shall remain binding upon the Owner until all such obligations are satisfied in full.
19. Throughout the term of this Agreement, the Owner shall take out and maintain general liability insurance with a minimum limit of \$2,000,000.00, with the Grantor named as an additional insured, in such form as may be satisfactory to the Grantor, acting reasonably, and upon request provide the Grantor with written confirmation of the existence of such insurance (including but not limited to providing copies of the insurance policies).

#### **DEFAULT**

20. Should the Owner be in default of any term, covenant or condition herein contained, the Grantor shall have the option to terminate this Agreement on 10 days' prior written notice to the Owner, provided such default has not been rectified by the Owner within said 10 day notice period.
21. In addition to the rights and remedies afforded to the Grantor hereunder, should the Owner be in default of any term, covenant or condition herein contained, the Grantor shall have the right (but not the obligation), without notice, to rectify such default on behalf of the Owner, and all cost, expenses and outlays whatsoever incurred by the Grantor in rectifying such default shall be payable by the Owner on demand. The obligation of the Owner under this Section shall survive the termination of this Agreement for any reason whatsoever, and shall remain binding upon the Owner until all such obligations are satisfied in full.

#### **GENERAL**

22. Pursuant to section 651.2 of the *Municipal Government Act*, this Agreement and each of the terms, covenants and conditions contained herein, shall be of the same force and effect for all intents and purposes as a covenant running with the Owner's Land and the Road Allowance, and subject to the terms of this Agreement, shall be binding upon, and enure to the benefit of, all future owners of the Owners' Land throughout the existence of this Agreement.
23. The Grantor shall be at liberty to register this Agreement by way of Caveat against the title to the Owners' Lands in order to protect the Grantor's interests under the terms of this Agreement. Any such Caveat or other registration shall expire and shall forthwith be discharged upon the termination of this Agreement.
24. All notices to be given in relation to this Agreement, as well as all requests for prior written consent required under this Agreement, may be hand delivered, faxed or sent by prepaid courier or registered mail addressed to the parties as follows:

- (a) to the Owner at:

Ronald McConnell and Darlene Sandboe  
Box 306, Ashmont Alberta, T0A 0C0  
Fax: \_\_\_\_\_

- (b) to the Grantor at:

County of St. Paul No. 19  
5015 – 49 Avenue  
St. Paul, Alberta T0A 3A4  
Fax: 780-645-3104  
Attention: Planning and Development Officer

or at such other address, in either case, as the Owner or the Grantor respectively may from time-to-time appoint in writing. Any notice sent in accordance with this Section shall be deemed to be given to and received by the addressee 7 days after the mailing thereof, postage prepaid, save and except for periods of postal interruption, in which case all notices required herein shall be sent by pre-paid courier or hand delivered and shall be deemed to have been received upon delivery thereof.

**25.** The Owner shall:

- (a) notify the Grantor, in writing, of any sale or transfer of the Owner's Lands;
- (b) notify the purchaser or transferee of the Owner's Lands of the terms of this Agreement; and
- (c) notify the purchaser or transferee of the Owner's Lands that the terms of this Agreement immediately terminate upon the transfer of title to the Owner's Lands.

**26.** The terms contained within this Agreement, including any recital and any Schedules attached hereto, shall constitute the entire agreement between the parties. Words within this Agreement importing number or gender shall be construed in grammatical conformance with the context or the party or parties in reference. Any term or provision of this Agreement which is found to be invalid or unenforceable shall be severed from the balance of the document, and shall not affect the enforceability of the remainder of this Agreement.

**27.** Should the Owner be comprised of more than party, all covenants of the Owner hereunder shall be construed to be joint and several.

**INDEPENDENT LEGAL ADVICE**

28. The parties hereby acknowledge and confirm that each was advised by the other to obtain independent legal or other professional advice, and that each has had an opportunity to read, review and understand the nature and effect of the provisions of this Agreement prior to executing this Agreement. Each hereby confirms that it has had the opportunity to seek independent legal or professional advice prior to executing this Agreement and has either:

- (a) obtained such legal or other professional advice; or
- (b) waived the right to obtain such independent legal or other professional advice.

**IN WITNESS WHEREOF** the parties have executed this Agreement to be effective the year and date first above written.

**COUNTY OF ST. PAUL NO. 19**

Per: \_\_\_\_\_ (c/s)

Per: \_\_\_\_\_

\_\_\_\_\_  
WITNESS

\_\_\_\_\_  
**RONALD McCONNELL**

\_\_\_\_\_  
WITNESS

\_\_\_\_\_  
**DARLENE SANDBOE**

**AFFIDAVIT OF EXECUTION**

CANADA  
PROVINCE OF ALBERTA  
TO WIT:

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I, \_\_\_\_\_ of the City of  
\_\_\_\_\_, in the Province of Alberta,  
MAKE OATH AND SAY:

1. THAT I was personally present and did see **Ronald McConnell** named in the within (or annexed) Instrument, who is personally known to me to be the person named therein, duly sign and execute the same for the purposes named therein.
2. THAT the same was executed at \_\_\_\_\_, in the Province of Alberta, and that I am the subscribing witness thereto.
3. THAT I know the said **Ronald McConnell** and he is, in my belief, of the full age of eighteen years.

SWORN before me at \_\_\_\_\_, in the )  
Province of Alberta, this \_\_\_\_ day of )  
\_\_\_\_\_, 2016. )

\_\_\_\_\_  
A Commissioner for Oaths in and for Alberta

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**AFFIDAVIT OF EXECUTION**

CANADA  
PROVINCE OF ALBERTA  
TO WIT:

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I, \_\_\_\_\_ of the City of  
\_\_\_\_\_, in the Province of Alberta,  
MAKE OATH AND SAY:

1. THAT I was personally present and did see **Darlene Sandboe** named in the within (or annexed) Instrument, who is personally known to me to be the person named therein, duly sign and execute the same for the purposes named therein.
2. THAT the same was executed at \_\_\_\_\_, in the Province of Alberta, and that I am the subscribing witness thereto.
3. THAT I know the said **Darlene Sandboe** and she is, in my belief, of the full age of eighteen years.

SWORN before me at \_\_\_\_\_, in the )  
Province of Alberta, this \_\_\_\_ day of )  
\_\_\_\_\_, 2016. )

\_\_\_\_\_  
A Commissioner for Oaths in and for Alberta

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# **SCHEDULE "A"** **The Encroachment**

