



HIGHWAY OR CITY OWNED LAND ENCROACHMENT AGREEMENT  
(SCHEDULE A OF BYLAW 628)

THIS AGREEMENT made the            day of            ,2020.

BETWEEN:

THE CORPORATION OF  
THE CITY OF CASTLEGAR  
460 Columbia Avenue  
Castlegar, British Columbia  
V1N 1G7  
(the "City")

OF THE FIRST PART

AND:

(the "Owner")

OF THE SECOND PART

WHEREAS:

A.        The Owner is the registered owner of those certain lands and premises situated in the City of Castlegar, British Columbia described as:

Civic Address:

Legal Description:

- B. The Owner has requested permission from the City to encroach upon lands which the City possesses for highway purposes or other purposes to enable the Owner to \_\_\_\_\_.
- C. The City agrees to permit the encroachment herein, as restricted and limited by the terms and conditions of this Agreement.

NOW THEREFORE THIS AGREEMENT WITNESSES THAT in consideration of the premises and covenants herein contained and the sum of Ten Dollars (\$10.00) now paid by each party to the other, the receipt and sufficiency of which is hereby acknowledged, and other good and valuable consideration, the parties agree as follows:

#### Definition

1. In this Agreement, the term 'highway' or 'city-owned land' shall have the meaning ascribed to it by the *Community Charter or Local Government Act*, as amended.

#### Permission to Encroach

2. The City hereby grants to the Owner permission to encroach upon that portion of a highway/city owned land in the City which is shown outlined in heavy red line on the drawing attached as Schedule "A" hereto (the "Encroachment Area") for the sole purpose of exterior siting of business activities.
3. The Owner acknowledges and agrees that the Encroachment Area is a highway/city owned land and that the City has limited power to authorize the private use of a highway/city owned land. The Owner further acknowledges and agrees that any rights granted by the City to the Owner herein are subject to the public's right to pass and repass over a highway/city owned land and that the City has full authority pursuant to this Agreement to require the removal of the encroachment permitted herein, at any time, without notice and without compensation to the Owner.

#### Payment

4. In consideration for the permission granted in section 2 hereof, the Owner covenants and agrees to pay to the City the sum of TEN DOLLARS (\$10.00) concurrent with the execution of this Agreement, receipt of which is acknowledged by the City.

#### Construction, Alteration and Maintenance of the Works

5. The Owner may, at his/her sole expense, erect Improvements and do such other work on the Encroachment Area as may be necessary to install and construct the Improvements in a safe and workmanlike manner in accordance with any necessary permit and plan acceptable to the Manager of Engineering or Manager of Planning, Development and Sustainability. All of the Works shall be completed to the City's approved standards for such construction.
6. The Owner shall at all times and at his/her sole expense keep and maintain the Improvements in good and sufficient repair to the reasonable satisfaction of the City, and no structural alterations shall be made to the Improvements except in accordance with any necessary permit and plan acceptable to the Manager of Engineering or Manager of Planning, Development and Sustainability.
7. The Owner shall be solely responsible for the due and proper payment of all municipal property taxes and other governmental fees, levies and charges which may be assessed and payable by the Owner in respect of the Improvements on the Encroachment Area.

#### Removal of Works

8. The Owner understands and agrees that the City may at any time, in its sole discretion, withdraw the rights it has granted herein to the Owner. In the event of such withdrawal, for any cause or reason whatsoever, the Owner shall, at his/her sole expense, within such time as may be specified by the City's Council, remove the Improvements made, constructed or maintained with respect to it, and otherwise restore the site to the satisfaction of the Manager of Engineering or Manager of Planning, Development and Sustainability.
9. Without restricting the generality of Section 8, in the event the Owner:
  - a. fails to keep the Improvements or any covering or structure pertaining thereto in good and sufficient repair to the reasonable satisfaction of the City; or

- b. fails or refuses to remove the Improvements or restore the site to the satisfaction of the Manager of Engineering or Manager of Planning, Development and Sustainability pursuant to Section 8 hereof; or
- c. cancels the insurance required to be maintained on the Lands and in respect of the Encroachment Area and the Improvements pursuant to Section 12 hereof, or
- d. violates any provision of this Agreement, or any provision of the City's bylaws relating to the Improvements;

all rights accruing to the Owner under this Agreement shall, unless the City decides otherwise, cease 30 days after receipt by the Owner of written notice from the City, if the default is not remedied by the Owner within that period. If the Owner does not remedy the default as aforesaid, the Manager of Engineering or Manager of Planning, Development and Sustainability may, in his/her sole discretion, enter on to the Lands and the Encroachment Area to effect the removal of the Improvements. The Owner covenants and agrees that the City shall be entitled to recover all costs of such removal from the Owner and that the Owner shall pay such costs immediately upon receipt of the City's bill for the same.

#### Emergency

- 10. The Owner grants to the City the right at any time, in the case of an emergency or apprehended emergency, without compensation to the Owner and without notice, to remove, destroy or alter the Improvements. All necessary and reasonable costs incurred by the City in alleviating the emergency or apprehended emergency shall be borne entirely by the Owner and may be recovered by the City from the Owner in accordance with Section 9.
- 11. Notwithstanding the remedies provided in Sections 8, 9 and 10 hereof, the City shall retain the right to proceed with the enforcement of any security or indemnity provided in satisfaction of any claim, loss or expense of any kind whatsoever arising under this Agreement or from the permission to encroach granted herein.

#### Indemnification and Insurance

- 12. The Owner:

- a. hereby indemnifies, saves harmless, releases and forever discharges the City, its members of Council, officers, employees, and agents and contractors from and against any and all manner of actions, causes of action, claims, debts, suits, losses, costs, demands and promises whatsoever, whether known or unknown, which the Owner or any other person now has or may at any time have by reason of:
  - i. the permission to encroach granted hereby; or
  - ii. the construction, maintenance, existence, use or removal of the Improvements including, without in any way restricting the generality of the foregoing, a claim for loss or injury to persons or property attributable to, arising from, or allegedly attributable to or arising from, the construction, installation or maintenance of the Improvements, including but not limited to, the Owner's negligence or failure to comply with the City's bylaws or with any provision of this Agreement; and
  
- b. agrees to obtain and maintain comprehensive general liability insurance on the Lands providing coverage for personal injury and property damage arising out of the existence and use of the Encroachment Area, in the amount of not less than TWO MILLION DOLLARS (\$2,000,000.00) per occurrence and on other terms satisfactory to the City, and agrees that the City shall at all times be named as co-insured in the policy of insurance. copy of the current insurance policy shall be provided annually to the City by the insurer. The policy shall also contain a clause providing that the insurer will give the City thirty (30) days prior written notice in the event of cancellation or material change. The amount of insurance provided for herein shall be increased if so required by the City to a reasonable amount specified by the City, on 120 days written notice.

#### Public Works

13. The City's officers, employees, agents and contractors shall have the right at any time to enter upon the Lands and the Encroachment Area for the purposes of inspecting the Improvements, and reconstructing, maintaining, repairing, inspecting, testing or removing any public works, utility or road existing at the date of this Agreement in the vicinity of the Works. The City shall in undertaking such activities use reasonable efforts to cause its officers, employees, agents and contractors to minimize any disruption or damage to the Works.
  
14. All costs to repair or replace the Improvements which occur as a result of the City's activities pursuant to Section 13, and all necessary and reasonable costs incurred by the City as part of

the City's activities pursuant to Section 13 in excess of those costs that would have been incurred if the Improvements did not exist, shall be borne entirely by the Owner. These costs may be recovered by the City from the Owner in accordance with Section 9.

15. This Agreement shall not in any way restrict the right of the City at any time to:
- a. improve, widen, raise or lower any roadway or boulevard abutting or adjoining the Lands;  
and
  - b. improve, enlarge, change, add to or delete from any underground utility in or in the vicinity of the Improvements;

notwithstanding that the effect of such activities may be to eliminate or render the Improvements useless for the purposes of the Owner.

16. The Owner hereby releases and forever discharges the City from all manner of claims of any nature whatsoever which may arise by reason of any act or omission of the City pursuant to Sections 8, 9, 10, 13 and 15 of this Agreement.

17. No provision of this Agreement and no act or omission or finding of negligence, whether joint or several, as against the City, in favour of any third party, shall relieve the Owner from liability to the City, whether such liability arises under this Agreement, under the provisions of the COMMUNITY CHARTER AND LOCAL GOVERNMENT ACT, AND AMENDMENTS THERETO, OR OTHERWISE.

18. Notwithstanding any provision of this Agreement, the Owner shall not be entitled to compensation for injurious affection or disturbance resulting in any way from the removal of the Improvements by the City and, without limitation, shall not be entitled to business losses, loss of market value, relocation costs or other consequential loss by reason of the removal of the Improvements or by reason of the permission to encroach granted herein.

19. Wherever this Agreement creates a power or obligation of the City to make a decision or to exercise any contractual right or remedy, the City may do so in accordance with the contractual provisions of this Agreement and no public law duty, whether arising from the principle of procedural fairness or the rules of natural justice, shall have any application.

20. This Agreement grants no interest in land in the Encroachment Area to the Owner.
21. Waiver of any default by either party shall not be deemed to be a waiver of any subsequent default.
22. All notices, demands and payments required or permitted to be given hereunder shall be in writing and may be delivered personally or electronically to the addresses set forth on the first page hereof. If notice is given by the Owner to the City, it shall be to the attention of the City Clerk. Any notice delivered or sent personally or electronically, shall be deemed to be given and received at the time of delivery. Any notice mailed as aforesaid shall be deemed to have been given and received on the expiration of 3 days after it is posted, addressed in accordance with the addresses on page 1 hereof, or at such other address or addresses as may from time to time be notified in writing by the parties hereto, provided that if there shall be between the time of mailing and the actual receipt of the notice a mail strike, slow down or other labour dispute which might affect the delivery of such notice by the mails, then such notice shall only be effected if actually delivered.
23. Whenever the singular or masculine is used in this Agreement, the same is deemed to include the plural or feminine or the body politic or corporate as the context so requires.
24. Every reference to each party is deemed to include the heirs, executors, administrators, permitted assigns, employees, servants, agents, officers and invitees of such party.
25. Any opinion which the City is entitled under this Agreement to form may be formed on behalf of the City by the Director of Development Services.
26. If any portion of this Agreement is held invalid by a Court of competent jurisdiction, the invalid portion shall be severed and the decision that it is invalid shall not affect the validity of the remainder of this Agreement.
27. This Agreement shall enure to the benefit of and be binding on the parties hereto notwithstanding any rule of law or equity to the contrary.
28. The Owner shall not be entitled to transfer or assign this Agreement, in whole or in part, and shall not permit or suffer any other person to occupy the whole or any part of the Encroachment

Area. Prior to transferring, assigning, giving or in any way alienating the Lands (the "Transfer"), the Owner shall advise the prospective transferee of the existence of this Agreement and, as a condition of the Transfer, cause the transferee to become a party to this Agreement in the place of the Owner.

29. This Agreement shall remain in full force and effect until terminated in accordance with Sections 8 or 9 hereof and the Works are removed from the Encroachment Area, at which time the permission granted to the Owner herein shall be revoked and the parties shall no longer have any obligations to each other pursuant to the Agreement.

30. The provisions herein contained constitute the entire agreement between the parties and supersede all previous communications, representations and agreements, whether verbal or written, between the parties with respect to the subject matter hereof.

31. Time is of the essence in this Agreement.

32. This Agreement shall be governed by and construed in accordance with the laws of the Province of British Columbia.

IN WITNESS WHEREOF the parties have hereunto executed this Agreement on the date and year first above written.

The Corporate Seal of THE CORPORATION OF THE CITY OF CASTLEGAR was hereunto affixed in the presence of:

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Mayor

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Director of Corporate Services

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Owner