



ENCROACHMENT AGREEMENT

THIS AGREEMENT made on the _____ day of _____ 2021.

BETWEEN:

RYAN BULLOCH

Hereinafter called the "Owner"

OF THE FIRST PART

- and -

**THE CORPORATION OF
THE TOWN OF ESPANOLA**

Hereinafter called the "Town"

OF THE SECOND PART

WHEREAS the Owner is the owner of the lands and premises described in Schedule "A" of this Agreement;

AND WHEREAS the Owner has indicated their desire to construct an acoustic fence to abate noise emissions from the subject lands;

AND WHEREAS the planned construction of said fence will encroach into the municipally owned laneway described as PCL 5826 SEC SWS; LANE PL M66 MERRITT N OF LT 79-91; ESPANOLA;

AND WHEREAS the Council of the Corporation of the Town of Espanola at its December 14, 2021 meeting, approved a motion to authorize an encroachment agreement with the Owners;

AND WHEREAS the Council of the Town agrees to allow the Owners to construct, maintain, and use the said encroachment onto the laneway until such time as the said encroachment is demolished, removed, or destroyed;

NOW THEREFORE in consideration of the premises and the covenants and agreements hereinafter to be performed, the parties hereto mutually covenant and agree with each other as follows:

Permission and Duration

1. The Town shall and does hereby allow the Owners, as the registered Owners of 291 James Street, the lands and premises described in Schedule "A", the

privilege of constructing and maintaining an acoustic fence on the lands described as in the laneway (PCL 5826 SEC SWS; LANE PL M66 MERRITT N OF LT 79-91) that are located at a distance up to 3 feet from the southerly boundary of 291 James Street (PCL 6861 SEC SWS and PCL 5363 SEC SWS; LTS 67 and 68 PL M38 MERRITT; ESPANOLA) and attached hereto as Schedule "B", until such time as the said encroachment is demolished, removed, or destroyed.

2. Such encroachment shall not block the laneway.

Transferability

3. This Encroachment Agreement and the consent hereby granted does not run with the land and shall not be transferred by the Owner without the consent in writing of the Town first had and received. On a sale of the land, the Owner shall notify the purchaser of the existence of this Agreement and may apply for consent to transfer this Agreement to the new owner. Such consent may be withheld by the Town unreasonably or with such conditions as it may in its absolute discretion determine. Transfer of the land without the consent of the Town shall immediately terminate this Agreement and the owner shall comply with his/her obligations under paragraph 7 hereof within 90 days of the said transfer of the land.

No Interest in Land

4. The Owner acknowledges that this Agreement shall in no way create any interest in land or easement rights and that this Agreement may be terminated by the Town at any time without any cause or reason whatsoever upon the Town giving 90 days notice, in writing, to the Owner pursuant to paragraph 7 hereof.

Responsibilities

5. The Owner hereby agrees to maintain the Encroachments in a safe condition and good state of repair at the Owner's sole expense and cost. Without limiting the generality of the foregoing, the Town may at any time give written notice to the Owner requiring that certain maintenance or repair work be carried out with respect to the Encroachments. Forthwith upon receipt of such notice, the Owner shall commence all work described therein and shall have such work completed to the satisfaction of the Town within the time period stipulated in the said notice.
6. If the Owner fails to maintain the Encroachments in a good state of repair and if, on the request of the Town, the Owner neglects, refuses, or fails to repair or maintain the same within a reasonable time, then the Town may cause the required work to be done and may charge the costs thereof to the

Owner, and the Town may recover such costs from the Owner in like manner as taxes that are due and payable.

Alterations to Encroachment

7. The Owner agrees not to make or cause to be made, any alteration or improvements, including removal, to the said Encroachments without the prior written consent of the Town.

Notice of Extinguishing Agreement and Removal of Encroachment

8. In the event that the Town at any time requires for any reason whatsoever the removal of the Encroachments or the termination of this Agreement, the Owner shall, at the Owner's sole cost and expense, remove the Encroachments herein upon 90 days notice in writing from the Town to do so, and shall not make any claim against the Town on account of such removal, and shall replace and restore the entire lands hereunto to a safe and proper condition, to the satisfaction of the Town. If the Owner neglects, refuses, or fails to do so within the term specified in the notice, then the Town may remove all installations and restore the Encroachment Area to a safe and proper condition, and may charge the costs thereof to the Owner, and the Town may recover such costs from the Owner in like manner as taxes that are due and payable.

Registration

9. The Town shall have the right and option to register this Agreement, or a notice thereof, against title to the Owner's Lands at the Owner's sole expense and cost.

Liability and Insurance Requirements

10. The Owner hereby covenants and agrees that it shall, at its sole expense, obtain and maintain, throughout the term of the encroachment agreement liability insurance with coverage for bodily injury and property damage on an occurrence basis with a limit of not less than one million dollars (\$1,000,000). The Owner shall provide the Town with a Certificate of Insurance or other satisfactory evidence of such insurance prior to execution of the encroachment Agreement and upon the anniversary date of the applicable policy described herein.
11. The Owner hereby covenants and agrees to indemnify and save the Town harmless against all manner of actions, causes of action, claims, demands, losses, costs, damages, and expenses of whatever kind or nature that may be suffered by or occasioned to the Town in any manner whatsoever, by reason of existence of the such Encroachments and projections therefrom.

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) **Per:**
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Mayor

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) **Per:**
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CAO/Treasurer

DRAFT

SCHEDULE "A"

DESCRIPTION OF LANDS BENEFITING FROM THIS AGREEMENT

All and singular that certain parcel or tract of land and premises situate, lying and being in the Town of Espanola, being composed of:

Description	Roll Number	PIN
MERRITT CON 5 LOT 7; PLAN M38 LOT 67-68; PCL 6861 AND PCL 5363	5226-000-0008-07500-0000	73408-0096 73408-0080

SCHEDULE "B"

DESCRIPTION OF LANDS TO WHICH THE ENCROACHMENT APPLIES

Description	Roll Number	PIN
Lands in the laneway (PCL 5826 SEC SWS; LANE PL M66 MERRITT N OF LT 79-91) that are located at a distance up to 2 feet from the southerly boundary of 291 James Street (PCL 6861 SEC SWS and PCL 5363 SEC SWS; LTS 67 and 68 PL M38 MERRITT; ESPANOLA)	Part of 522600000901100, 522600000901000	Part of 734080098

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