

EXECUTION VERSION

THIS AGREEMENT made as of the day of December, 2022.

BETWEEN:

MICHAEL EDWARD HAHN and KATHERINE HAHN

(hereinafter called the “Licensee”)

OF THE FIRST PART

- and -

THE CORPORATION OF THE MUNICIPALITY OF KINCARDINE

(hereinafter called the “Municipality”)

OF THE SECOND PART

(each individually a “Party” and collectively the “Parties”)

WHEREAS Michael Edward Hahn and Katherine Hahn are the registered owners of the Paul’s Pier Property, which is more particularly described in Schedule “A” attached hereto;

AND WHEREAS Michael Edward Hahn is the registered owner of the Red Pine Crescent Property, which is more particularly described in Schedule “A” attached hereto;

AND WHEREAS the Paul’s Pier Property and the Red Pine Property are separated by the municipal road known as Red Pine Crescent which is owned by the Municipality, which is more particularly described in Schedule “A” attached hereto;

AND WHEREAS the Licensee wishes to install a Security System Cable by way of a 1.5 inch PVC pipe (“**Encroachment**”) within Red Pine Crescent (“**Encroachment Area**”) to connect the Paul’s Pier Property and Red Pine Property, the proposed location of the said Encroachment is identified as Part 1 on Reference Plan 3R-10676 which is attached hereto as Schedule “B”;

AND WHEREAS the Municipality is prepared to allow the Encroachment within its Municipal Road for the sole purpose of the Licensee installing the Security System Cable within the Municipal Road, to the Municipality’s sole satisfaction, and at the Licensee’s sole risk and expense, provided that the Licensee enter into this Agreement acknowledging the terms and conditions of the Encroachment and the non-exclusive use of the Municipal Road;

AND WHEREAS the Parties wish to set forth herein the terms and conditions regarding the Encroachment and Encroachment Area;

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the premises and the sum of two (\$2.00) Dollars of lawful money of Canada now paid by the Licensee to the Municipality, and in consideration of an annual fee of two (\$2.00) Dollars, the parties hereto agree and covenant as follows:

1. DEFINITIONS

Wherever used in this Agreement, the following words and terms have the meanings set out below:

“**Agreement**” means this agreement, executed between the Parties;

“**Contractor**” means Pickard Construction, the contractor retained by the Licensee to install the Security System Cable;

“**Paul’s Pier Property**” means the property municipally known as 6 Paul’s Pier, Tiverton, Ontario and legally described as LT 26 PL 790, MUNICIPALITY OF KINCARDINE; being all of PIN 33284-0062(LT);

“**Properties**” means the Paul’s Pier Property and the Red Pine Property;

“Red Pine Property” means the property municipally known as 30 Red Pine Crescent, Tiverton, Ontario and legally described as LT 36 PL 790; MUNICIPALITY OF KINCARDINE; being all of PIN 33284-0072(LT);

“Municipal Road” means Red Pine Crescent legally described as RED PINE CRES PL 790; KINCARDINE; being of all PIN 33284-0078(LT);

“Security System Cable” means the security system cable to be installed in a 1.5-inch PVC pipe directly between the southeasternmost point of the Paul’s Pier Property and the westernmost point of the Red Pine Property; the Security System Cable would run in a straight line across and perpendicular to Red Pine Crescent and would be installed eight feet under the surface of Red Pine Crescent; the Security System Cable is more particularly described in Schedule ‘B’ hereto;

“Work” means the construction and installation of the Security System Cable and PVC pipe within the Municipal Road pursuant to this Agreement.

2. RECITALS

- 2.1 The Parties agree that the recitals to this Agreement are true and form part of this Agreement.

3. SCHEDULES

- 3.1 The Parties agree that the Schedules attached hereto form part of this Agreement.

4. PERMITTED USE

- 4.1 The Municipality agrees to allow the Licensee to install the Security System Cable and 1.5 inch PVC pipe within the Municipal Road, at the specific location identified as Part 1 on 3R-10676 .

5. TERM

- 5.1 The Encroachment shall be permitted to exist for a period of twenty (20) years, commencing from the date this Agreement has been executed by both parties, unless otherwise terminated in accordance with the provisions of this Agreement (the **“Term”**).
- 5.2 Upon the expiration of the Term, if the Municipality is of the view that the Encroachment remains necessary, this Agreement may be renewed, on the same terms and conditions as outlined herein, for a term as determined at the Municipality’s sole discretion.
- 5.3 Upon the expiration of the Term, if this Agreement is not renewed pursuant to the provisions of this Agreement, the Encroachment shall be removed immediately and the Licensee shall be required to restore the Municipal Road to the condition that existed prior to the date of this Agreement or as directed by the Municipality, acting reasonably, at the Licensee’s sole expense.
- 5.4 This Agreement shall terminate immediately if the Licensee sells, transfers, or conveys either the Paul Pier’s Property or Red Pine Property.

6. INSTALLATION OF SECURITY SYSTEM CABLE

- 6.1 All Work for the purpose of laying, installing, and maintaining the Security System Cable and pipe, and all repairs to the Municipal Road made necessary by the laying, installing, and maintaining of the Security System Cable and pipe shall be done by the Licensee and the Contractor with prior written consent of the Municipality. All costs of construction shall be borne by the Licensee.
- 6.2 Before the execution of this Agreement, the Licensee agrees to submit a deposit to the Municipality in the amount of \$2,500 as a security to ensure that the construction and installation of the Security System Cable and pipe within the Municipal Road is both

completed and installed to the Municipality's satisfaction. All remaining security shall be returned to the Licensee upon completion of the Work.

- 6.3 Prior to commencement of the Work, the Municipality shall have the opportunity to conduct a site meeting with the Contractor.
- 6.4 The Contractor shall obtain a Road Occupancy Permit from the Municipality prior to the commencement of the Work.
- 6.5 The Licensee shall direct the Contractor to provide, at least seven (7) days before commencing the Work, written notice to the Municipality, which notice shall set out the date and time for commencement of the Work and an estimated time of completion of the Work.
- 6.6 A road cut will only be permitted if it is necessary in the sole opinion of the Municipality.
- 6.7 All drilling conducted as part of the Work shall commence and terminate on the Properties.
- 6.8 Following the installation of the Encroachment within the Municipal Road, the Licensee agrees to repair any damage caused to any existing road, road allowance or existing structure(s) as a result of the construction and installation and shall pay for any costs incurred by the Municipality in relation to the relocation of existing services such as hydrants, telephone poles, etc. which may be necessary because of the construction and installation of the Encroachment within the Municipal Road.
- 6.9 The Licensee agrees to reimburse the Municipality for all costs associated with repairing any underground utility infrastructure that is owned by the Municipality if the Licensee was notified of the presence of said utility by the Municipality in advance of the construction and installation of the Security System Cable within the Municipal Road.
- 6.10 During and following the installation of the Security System Cable within the Municipal Road, the Licensee shall dispose of all construction refuse, materials or debris related to the Work, in an orderly fashion, to the Municipality's satisfaction. In the event the Licensee discovers any waste, contaminants, pollutants, hazardous substances or any other similar substances that may be detrimental to the environment during the construction and installation of the Security System Cable within the Municipal Road, the Licensee agrees to notify the Municipality immediately of such waste, contaminants, pollutants, hazardous substances or any other similar substances from the Municipal Road.
- 6.11 In conducting the Work, the Licensee and the Contractor must adhere to all rules and regulations that relate to signage, traffic control persons, etc., as shown in the "Ontario Traffic Control Manual" for "Temporary Roadway Work."
- 6.12 Should the Security System Cable be damaged by the Municipality in the course of their work or repairing and maintaining Red Pine Crescent, the Licensee expressly waives all and any claims in respect of such damage.
- 6.13 Any alteration or improvements made to the Encroachment to which the Municipality has consented shall be performed and completed to the satisfaction of the Municipality, acting reasonably, at the sole risk and expense of the Licensee.
- 6.14 The Licensee agrees that there shall be no alterations or improvements made to the Encroachment without the prior and express consent of the Municipality. Failure to obtain consent shall cause the Encroachment to be immediately removed, and the Encroachment Area restored to the state it was in prior to any alterations or improvements, at the Licensee's sole risk and expense.
- 6.15 The Licensee agrees that if the Encroachment is moved, altered or changed by the Licensee in any manner during the Term of this agreement, without the express written consent of the Municipality, the Municipality shall have the right to immediately terminate this Agreement and, upon termination of the agreement, the Encroachment shall be immediately removed by the Licensee at the Licensee's sole risk and expense.

and the Licensee shall repair and make good all damage and disturbance that may be caused to the Encroachment or the Municipality's infrastructure, to the satisfaction of the Municipality, acting reasonably, at the sole expense of the Licensee.

- 6.16 In the event that one or both of the Properties are to be sold, the Licensee shall notify the Municipality of such pending sale and the Licensee shall forthwith and at their own expense remove the Security System Cable from the Municipal Road and shall make such repairs to the Municipal Road as may be necessary by the removal of the Security System Cable or if the Municipality so directs the work of removal of such cable and repairs to the Municipal Road shall be done by the Municipality and the Licensee shall forthwith pay to the Municipality the full cost thereof.
- 6.17 The Municipality may at any time hereafter withdraw and terminate the permission granted herein to install and maintain the Security System Cable under its Municipal Road on giving the Licensee written notice of termination and upon the expiration of sixty (60) days from the date of giving of such notice of termination, the Licensee shall forthwith and at their own expense remove the Security System Cable from the Municipal Road and make such repairs to the Municipal Road as may be necessary by the removal of the Security System Cable or if the Municipality so directs the work of removal of such cable and repairs to the Municipal Road shall be done by the Municipality and the Licensee shall forthwith pay to the Municipality the full cost thereof.
- 6.18 In the case of emergency which would somehow reasonably require the removal of the Encroachment from the Municipal Road, the Municipality shall have the right to immediately terminate this Agreement and remove the Encroachment forthwith, at the Municipality's expense.

7. MAINTENANCE

- 7.1 The Licensee shall, at their sole cost and expense, maintain the Security System Cable and Encroachment Area in a state of good working order, condition and repair, to the full satisfaction of the Municipality, during the Term.
- 7.2 In maintaining the Security System Cable, the Licensee shall, at all times, comply with all federal and provincial laws, as well as all municipal by-laws, including any by-laws, orders or other requirements of the Municipality.

8. FEES, CHARGES & COSTS

- 8.1 The Licensee agrees to pay to the Municipality all applicable fees and charges and to reimburse the Municipality for its costs, including any legal or professional fees, it has incurred in relation to, or as a result of, this Agreement, including the costs to prepare this Agreement, any title searches and the registration of this Agreement on title, if applicable. All costs incurred by the Municipality will be invoiced to the Licensee. Any unpaid charges shall be added to the tax roll and collected in the same manner as municipal taxes.

9. INDEMNIFICATION & INSURANCE

- 9.1 The Licensee shall defend, indemnify and save harmless the Municipality, its elected officials, officers, employees and agents from and against any and all claims of any nature, actions, causes of action, losses, expenses, fines, costs (including legal costs), interest or damages of every nature and kind whatsoever, which may be incurred, sustained or paid by the Municipality as a consequence of, or arising out of, this Agreement. The Licensee hereby grants to the Municipality full power and authority to settle any such actions, suits, claims, and demands on such terms as the Municipality may deem advisable and hereby covenants and agrees with the Municipality to pay the Municipality, on demand, all moneys paid by the Municipality in pursuance of such settlement and also such sum as shall represent the reasonable costs of the Municipality or its solicitor in defending or settling any such actions, suits, claims or demands and this Agreement shall not be alleged as a defense by the Licensee in any action by any person of actual damage suffered by reason of the permission hereby granted by virtue

of this Agreement. The Licensee agrees that all costs, charges and expenses paid by or incurred by the Municipality as aforesaid shall form and constitute a charge or lien on the Licensee's Properties until discharged by payment thereof. This indemnity shall be in addition to and not in lieu of any insurance to be provided by the Licensee in accordance with this Agreement and shall survive this Agreement.

- 9.2 Following the erection of an insurable structure on the Licensee's Property, the Licensee shall obtain insurance, in a form satisfactory to the Municipality, against all damages or claims for damage in an amount of not less than Two Million Dollars (\$2,000,000.00) and provide proof of such insurance to the Municipality, when requested by the Municipality. The insurance policy shall name the Municipality as an additional insured and shall contain a cross-liability exclusion clause.
- 9.3 Prior to any Work, the Contractor shall supply a Clearance Certificate or Letter of Independent Contractor Status issued by the Workplace Safety Insurance Board (WSIB) directly to the Municipality.
- 9.4 The Contractor shall obtain and provide a copy of a Commercial General Liability Insurance, underwritten by an insurer licensed to conduct business in the Province of Ontario, for a limit of not less than \$2 million per occurrence, and an aggregate limit of not less than \$2 million, within any policy year with respect to completed operations and a deductible of not more than \$100,000 to the Municipality of Kincardine prior to commencing any Work on the Municipal Road. The insurance coverage shall not be less than the insurance provided by IBC Form 2100 and IBC Form 2320. The policy shall include an extension for a standard provincial and territorial form of non-owned automobile liability policy. This policy shall include but not be limited to:
 - (a) Name the Owner as an additional insured;
 - (b) Cross-liability and severability of interest;
 - (c) Blanket Contractual;
 - (d) Products and Completed Operations;
 - (e) Premises and Operations Liability;
 - (f) Personal Injury Liability;
 - (g) Contingent Employers Liability;
 - (h) Work performed on Behalf of the Named Insured by Sub-Contractors;
 - (i) Broad Form Property Damage;
 - (j) Firefighting Expenses;
 - (k) Attached Machinery; and
 - (l) 30 days' notice of cancellation.
- 9.5 The Contractor's Commercial General Liability Insurance policy shall contain an Explosion, Collapse or Underground Endorsement. Where the Description of the Project, Supply or Work involves the use of explosives for blasting or vibration from pile driving or caisson work, or the removal or weakening of support of such property, building or land, whether such support be natural or otherwise, Explosion, Collapse or Underground (XCU) coverage must be added by endorsement.
- 9.6 The Contractor shall obtain and provide a copy to the Municipality prior to the commencement of any Work a Standard Form Automobile Liability Insurance that complies with all requirements of the current legislation of the Province of Ontario, having an inclusive limit of not less than \$2 million per occurrence for Third Party Liability, in respect of the use or operation of vehicles owned, operated or leased by the Contractor.

10. DEFAULT BY LICENSEE

10.1 If the Licensee defaults on any term, covenant, provision, requirement, or obligation of this Agreement and if such default continues for ten (10) business days after the Licensee receives notice of such default by the Municipality (or such shorter time as may be required in the cases of an emergency situation being one which the Municipality reasonably considers to pose an imminent risk to the safety of any persons or property or other urgent matters or as otherwise provided for herein), the Municipality shall have the right to undertake the completion of such work as the Municipality deems reasonably necessary at the expense of the Licensee and the Municipality may immediately terminate this Agreement. Such termination shall be by written notice to the Licensee, except in the case of emergency. In the case of emergency, the Agreement may be terminated forthwith by the Municipality. Any waiver by the Municipality of any breach by the Licensee or any provision of this Agreement shall be without prejudice to the exercise by the Municipality of all or any of its rights or remedies in respect of any continuance or repetition of such breach.

11. NOTICES

11.1 All notices or communications required or permitted hereunder shall be given by registered or certified mail, email (subject to confirmation of receipt), fax (subject to confirmation of transmittal) or courier, and addressed to the other Party at the addresses set forth below, or at such other addresses or to the attention of such other individual as such Party may from time to time specify for that purpose in a notice similarly given:

To:

Michael and Katherine Hahn (Licensee)
6 Paul's Pier Rd.
Tiverton, ON
N0G 2T0
Phone: (519) 569-0730
Email: mhahn@tri-mach.com

And To:

Municipality of Kincardine
1475 Concession 5
Kincardine, ON
N2Z 2X6
Phone: 519-396-3468
Fax: 519-396-1430
Email: clerk@kincardine.ca

12. GENERAL

12.1 This Agreement may be executed in one or more counterparts, each of which when so executed and delivered shall be an original, and such counterparts shall together constitute one and the same instrument. An executed counterpart of this Agreement may be delivered by email transmission.

12.2 This Agreement constitutes the entire agreement among the Parties with respect to the subject matter hereof.

12.3 This Agreement is not transferable or assignable by the Licensee to any third party without the prior written consent of the Municipality. Any attempt to transfer or assign any or all of the rights, duties or obligations of this Agreement by the Licensee, without the prior written consent of the Municipality is void.

12.4 The Licensee hereby consents to the registration of this Agreement together with any schedules hereto, upon the title to the Properties and by signing this Agreement hereby authorizes the Municipality's Solicitor to register this Agreement in the Bruce County Land Registry Office (LRO#3) without the necessity of a signed Acknowledgment and

Direction. The Municipality shall have the Agreement registered upon title and any costs associated with the said registration shall be paid for by the Licensee as well as any further costs incurred by the Municipality as a result of the registration of any other documents pertaining to this Agreement.

12.5 No waiver or modification of any provision of this Agreement is binding unless it is in writing and signed by all the Parties to this Agreement. No failure to exercise, and no delay in exercising any right or remedy under this Agreement will be deemed to be a waiver of that right or remedy. No waiver of any breach of any provision of this Agreement will be deemed to be a waiver of any subsequent breach of that provision.

12.6 If any provision of this Agreement is or becomes illegal, invalid or unenforceable in any jurisdiction, the illegality, invalidity or unenforceability of that provision will not affect:

- i. the legality, validity or enforceability of the remaining provisions of this Agreement; or
- ii. the legality, validity or enforceability of that provision in any other jurisdiction.

12.7 The Parties hereto agree to execute and deliver any further documents or assurances necessary or desirable to give effect to the permission hereby granted.

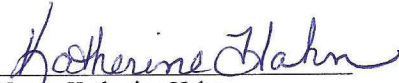
12.8 This Agreement shall be governed by and interpreted in accordance with the laws of Ontario and the federal laws of Canada applicable in Ontario.

SIGNATURE PAGE TO FOLLOW

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives as of the date first entered above:



Name: Michael Edward Hahn



Name: Katherine Hahn

The Corporation of the Municipality of Kincardine

Per: _____
Kenneth Craig, Mayor

Per: _____
Jillene Bellchamber-Glazier, CAO

We have authority to bind the Corporation

SCHEDULE "A"

1. **6 PAUL'S PIER, TIVERTON**

LT 26 PL 790; MUNICIPALITY OF KINCARDINE being all of PIN 33284-0062 (LT)

2. **30 RED PINE CRESCENT, TIVERTON**

LT 36 PL 790; MUNICIPALITY OF KINCARDINE being all of PIN 33284-0072 (LT)

3. **RED PINE CRESCENT**

RED PINE CRES PL 790; KINCARIDNE being all of PIN 33284-0078 (LT)

SCHEDULE "B"

