



BY-LAW

No. 2024 -

Being a By-law to Authorize an Encroachment Agreement to Permit an Encroachment onto Municipal Property (53 Whippoorwill Lane)

Whereas Section 8 (1) and 9 of the Municipal Act, 2001 S.O. 2001, c. 25, as amended, provide that the powers of a municipality under this or any other Act shall be interpreted broadly so as to confer broad authority on the municipality to enable the municipality to govern its affairs as it considers appropriate and to enhance the municipality's ability to respond to municipal issues and has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority under this or any other Act; and

Whereas Section 11 (3) of The Municipal Act, S.O. 2001, c. 25, as amended, provides that a lower-tier municipality may pass by-laws, respecting matters within the sphere of jurisdiction of highways, including parking and traffic on highways; and

Whereas Abigayle Dawn Pawson and William George Pawson are the registered owner of the lands legally described as PT LT 27 CON A KINCARDINE AS IN R349840, T/W R349840; MUNICIPALITY OF KINCARDINE, and known as 53 Whippoorwill Lane in the Municipality of Kincardine, County of Bruce; and

Whereas the Council of The Corporation of the Municipality of Kincardine has been requested to enter into an agreement to allow encroachments on municipal property; now therefore be it

Resolved that the Council of The Corporation of the Municipality of Kincardine **Enacts** as follows:

1. The owners of the lands legally described as PT LT 27 CON A KINCARDINE AS IN R349840, T/W R349840; MUNICIPALITY OF KINCARDINE , Roll #41-08-210-004-13300, and known municipally as 53 Whippoorwill Lane, is hereby allowed to maintain and use the portion of the encroachment upon municipal property subject to the Encroachment Agreement attached as Schedule 'A' to this By-law.
2. The encroachment includes a frame shed and stairs, as outlined on the sketch attached to the Agreement and shall be subject to the terms and conditions of the Encroachment Agreement attached as Schedule 'A' to this By-law.
3. That the Mayor and Clerk be authorized and directed to execute, on behalf of the Council of The Corporation of the Municipality of Kincardine, the Encroachment Agreement with Abigayle Dawn Pawson and William George Pawson and the necessary documents to fulfill the intent of this By-law.
4. That this By-law shall come into full force and effect upon its final passing.
5. This By-law may be cited as the "Pawson 2024 Encroachment Agreement (53 Whippoorwill Lane) By-law".

Read a First, Second and Third Time and Finally passed this 14 day of August, 2024.

Mayor

Clerk

Schedule 'A'

ENCROACHMENT AGREEMENT

THIS AGREEMENT made this 14th day of August, 2024

BETWEEN:

(the "Licensee")

– and –

**THE CORPORATION OF THE
MUNICIPALITY OF KINCARDINE**

(the "Municipality")

WHEREAS PAWSON, ABIGAYLE DAWN AND PAWSON, WILLIAM GEORGE ("Licensees") are the registered owner(s) of the lands legally described as PT LT 27 CON A KINCARDINE AS IN R349840, T/W R349840; MUNICIPALITY OF KINCARDINE in the Municipality of Kincardine, in the County of Bruce ("Lands");

AND WHEREAS the Municipality of Kincardine ("Municipality") owns the lands legally described as RDAL OR MARINE RESERVE ALONG SHORE OF LAKE HURON KINCARDINE ABUTTING LT 18-30 CON A KINCARDINE; KINCARDINE known as "Shore Road Allowance";

AND WHEREAS the Licensee own steel stairs and a frame shed which encroaches upon the Shore Road Allowance approximately 17 meters and is more or less as shown on the sketch attached as Schedule "A", and referred to as the "Encroachment";

AND WHEREAS the Licensee requests, and the Municipality grants, permission for the Encroachment (to continue) upon the Shore Road Allowance on certain terms and conditions as set out in this Agreement;

IN CONSIDERATION of other good and valuable consideration and the sum of \$2.00 of lawful money of Canada now paid by the Licensee to the Municipality (the receipt whereof is hereby acknowledged) the Municipality grants, subject to the provisions set forth, to the Licensee, an Agreement to permit the Encroachment upon the Shore Road Allowance, subject to the following provisions:

Recitals & Schedules

1. The parties agree that the recitals above are accurate and form part of this Agreement.
2. The parties acknowledge and agree that the Schedules attached hereto form part of this Agreement.

Encroachment Agreement

3. The Municipality hereby grants the Licensee permission to occupy, maintain, and repair to a safe condition, as the case may be, from time to time, the Encroachment, located on the Shore Road Allowance.
4. The Licensee acknowledges and agrees that the use and occupation of the Shore Road Allowance shall not be an exclusive use. The Licensee acknowledges that no

representation has been made by the Municipality of any authority to grant the privilege to use and maintain the Encroachment and such use and maintenance by the Licensee shall at all times be at the Licensee's risk.

5. Save and except as required to maintain and repair to a safe condition the Encroachment and as otherwise specifically authorized herein, this Encroachment Agreement does not provide any implied right on the part of the Licensee, or its contractors, to disturb the soil or vegetation on or beyond the Shore Road Allowance, unless prior written approval is provided by the Municipality. The Municipality has the right to refuse such requests.
6. The Licensee and the Municipality hereby agree that this Encroachment Agreement shall cover the Encroachment as described herein and this Encroachment Agreement shall not provide any implied right on the part of the Licensee to further alter, reconstruct or otherwise change the Encroachments approved by the Municipality herein. If the Encroachment, building or structure to which the Encroachment is attached, is rebuilt, altered or removed in any way for any reason, the Licensee shall remove the Encroachment from the Shore Road Allowance.
7. Where, in the opinion of the Municipality, it is necessary to remove or alter the Encroachment or part thereof, the Licensee shall, at its own cost, charge and expense, and to the satisfaction of the Municipality, alter or remove the Encroachment or any part thereof from the Shore Road Allowance, and restore the affected area upon receiving notice in writing from the Municipality to do, without being entitled to any compensation whatsoever for such alteration or removal and restoration. If the Licensee neglects, refuses or fails so to do within 90 days of receiving the aforesaid notice to alter or remove, then the Municipality may alter the Encroachment or parts thereof from the Shore Road Allowance, as determined by the Municipality at the cost, charge and expense of the Licensee and the invoice of the Municipality as to the cost of such alteration or removal and restoration shall be final and binding upon the Licensee and the Municipality may recover such costs from the Licensee in like manner as taxes.
8. Nothing in this Agreement shall be construed as giving to the Licensee anything more than a Licence on the terms and conditions set out in this Agreement. The Licensee agrees that in the event that the Encroachment are used by any person for whom the Licensee is in law responsible (other than the Licensee) for any purpose other than as authorized herein this Licence may be terminated immediately by the Municipality, without compensation to the Licensee, and the Licensee shall, at its sole cost and expense and to the satisfaction of the Municipality, acting reasonably, remove the Encroachment, and complete all required remedial work reasonably required by the Municipality to restore the land affected by the Encroachment (the "Remedial Work").
9. In consideration of the Municipality entering into this Agreement, the Licensee agrees:
 - (a) to waive all rights it now has, or hereafter can, shall or may have with respect to any actions, suits, debts, accounts, claims, losses, demands, damages, liabilities, costs and expenses that the Licensee may have in relation to the Encroachment;
 - (b) to release and forever discharge the Municipality of and from all actions, causes of action, suits, debts, accounts, covenants, contracts, claims, losses, demands, damages, liabilities, costs and expenses whatsoever which the Licensee now has, or hereafter can, shall or may have, with respect to the Encroachment, save and except the terms, covenants and provisions of this Encroachment Agreement; and

- (c) not to make any claims, or commence or maintain any action or proceedings against any person or corporation who might claim contribution and indemnity from the Municipality in connection with the Encroachment.

The Licensee acknowledges that the Municipality is relying on this Section 9 in order to enter into this Encroachment Agreement.

- 10. Notwithstanding any term, covenant or provision of this Agreement, the Municipality or Licensee may terminate this Agreement on thirty (30) days written notice.

License Fee

- 11. The Licensee agrees to pay to the Municipality prior to the execution of this Agreement, the sum of \$250.00, being the administration fees of the Municipality to defray the cost of preparing and administering this Agreement, the sum of \$500.00, being the Agreement deposit fee, and shall further pay the Municipality an annual fee of \$100.00 during each calendar year of the term of this Agreement. The payment is to be made annually on the property tax bills.

Term

- 12. The term of this Agreement shall expire on the earlier of:
 - (i) The date of removal of the Encroachment either voluntarily by the Licensee or in accordance with the terms contained in this Agreement; or
 - (ii) The date of the sale or transfer of the lands described in Schedule "A" unless the Municipality at the request of the purchaser or transferee of the lands, approves an extension and assignment of this Agreement and the purchaser or transferee has executed the extension and assignment agreement prepared by the Municipality.

Licensee Covenants

- 13. The Licensee hereby agrees to maintain the Encroachment, at its sole cost and expense, and in a state of good order, condition, and repair, to the satisfaction of the Municipality, acting reasonably. In maintaining, relocating, and removing the Encroachment. In this regard, the Licensee will comply with all the requirements of the Municipality.
- 14. The Licensee hereby agrees to comply at all times with all federal and provincial laws, as well as all municipal by-laws, including any by-laws, orders or other requirements of the Municipality.
- 15. The Licensee hereby agrees to repair, to the satisfaction of the Municipality and at its sole cost and expense, any damage caused to the Municipality's Shore Road Allowance by the construction or maintenance of the Encroachment and indemnify and save harmless the Municipality from any and all losses, costs, charges, and expenses which may be paid, incurred or sustained by the Municipality as a result of any such damage.
- 16. The Licensee hereby agrees to allow the Municipality, and its respective officers, servants, workers, employees, agents and contractors under its control or supervision or any of them, the right from time to time and at all reasonable times during the currency of this Agreement, to enter in and upon the Lands or any part thereof, with all necessary workers, plant, equipment and material for the purpose of inspecting, altering or removing the Encroachment from the Shore Road Allowance in accordance with this Agreement. Such inspection shall not free or relieve the Licensee in any way

whatsoever from the liability under the covenant set out to keep and maintain the Encroachment in good and proper repair and condition.

17. The Licensee hereby agrees to allow the Municipality, or any gas, telephone, telegraph, electric light or other public utility company, their respective officers, servants, workers, employees, agents and contractors, to enter at all times upon the Shore Road Allowance for the purpose of constructing, repairing, maintaining, replacing or removing any sewers, mains, culverts, drains, water pipes, poles, wires or otherwise underground services and installations and appurtenances thereto. The Licensee shall not be entitled to any damages or compensation by reason of the exercise of the Municipality or utility company's rights contained in this clause and the Licensee at its own expense shall carry out such alteration or removal of the Encroachment as the Municipality may direct pursuant to the exercise of the Municipality's or utility company's rights.

Indemnification and Insurance

18. The Licensee agrees to indemnify and hold harmless the Municipality from and against all suits, judgments, claims, demands, expenses actions, causes of action and losses and for any and all liability for damages to property and injury to persons (including death) which the Municipality may incur, otherwise than by reason of their own negligence or willful misconduct, as a result of or arising out of or in relation to any breach of the terms of this Agreement.
19. The Licensee shall put in effect and maintain in its name, at its expense, all the necessary insurance that would be considered appropriate for a prudent tenant undertaking this type of operation for the period during which the Agreement is in effect with insurers acceptable to the Municipality, including:
- (i) General Liability Insurance, for third party bodily injury, personal injury and property damage to an inclusive limit of not less than Two Million Dollars (\$2,000,000.00) per occurrence. The policy shall include:
 - a) The Corporation of the Municipality of Kincardine as an additional insured; and
 - b) A thirty (30) day written notice of cancellation.
 - (ii) The Licensee shall provide the Municipality with a valid Certificate of Insurance as evidence of the above coverages upon signing the Agreement and as requested by the Municipality from time to time. The Licensee shall provide the Municipality with any renewal replacement certificates as may be necessary during the term of the Agreement. The Licensee shall also provide the Municipality with a valid Certificate of Insurance on each anniversary date of this Agreement.

Fees/Costs

20. The Licensee agrees that any legal fees and disbursements, survey costs or any other costs incurred by the Municipality for the purpose of entering into this Agreement shall form and constitute a charge or lien on the Lands until fully paid and may be collected by the Municipality in like manner as municipal taxes pursuant to the provisions of the *Municipal Act* (Ontario), as amended.
21. In the event of the Municipality at any time enacting a by-law levying a tax upon all encroachments of buildings or other structures over, under or upon any highway, street, lane, road allowance or easement in the Municipality, the Licensee shall pay

forthwith on demand whatever tax may be levied in respect of the Encroachment upon the Shore Road Allowance.

Assignment

22. The Licensee covenants and agrees not to assign or to transfer this Agreement to any successor or assignee of the Lands without the consent of the Municipality and if such assignment is agreed the Licensee will obtain from such successor or assignee a covenant in favour of the Municipality that the successor or assignee will be bound by all of the terms and conditions of this agreement from and after the date of its assignment as aforesaid, it being the intention that the owner from time to time of the Lands shall have the benefit of and be liable for performance of the obligations contained in this Agreement.

Registration

23. The Licensee hereby consents to the registration of this Agreement together with any schedules hereto, upon the title to the Lands and the Shore Road Allowance 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.

Notice

24. The Licensee agrees that for the purpose of this Agreement, notice may be given to the Licensee by mailing the same, by prepaid registered mail, addressed to the Licensee at its address as last known to the Municipality pursuant to the most recent revised assessment rolls. Such notice shall be deemed to have been received by the Licensee five (5) days following the date when it was handed to the post office.

25. If any notice is required to be given to either parties of this Agreement, such notice shall be sent by registered mail, registered courier or delivered personally to:

Licensee: **William Pawson & Abigayle Pawson**
515 Beaver Creek Rd.,
Waterloo, ON N2V 2L3
Email: bill@tubeproinc.com

Municipality:
Municipality of Kincardine
Infrastructure and Development Office
1475 Concession 5,
Kincardine, ON N2Z 2X6
Attn: Clerk
Email: clerk@kincardine.ca

General

26. The Licensee shall, at all times during the life of this Agreement, be subject to all laws, by-laws and regulations now or hereinafter enacted, to all statutes, orders and rules made or to be made by a lawfully constituted authority having jurisdiction therein.

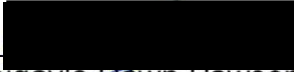
27. This Agreement is solely for the benefit of the parties hereto and is not transferable to, or enforceable by, any heirs, executors, successors, assigns, nor transferable to any subsequent owners or tenants of the property.
28. This Agreement shall be read with all changes of gender or number required by the context.
29. Any amendments to this Agreement shall be in writing and signed by both the Lessor and Lessee.
30. If any clause or parts thereof in this Agreement are determined to be unenforceable, they shall be considered separate and severable from the Agreement and the remaining provisions of the Agreement shall remain in full force and effect.
31. This Agreement may be executed and delivered by counterparts with the same effect as if the parties hereto have signed and delivered the same document. All counterparts shall be construed together and shall constitute one and the same Agreement. Any delivery of an executed copy of this Agreement by way of telecopy, facsimile or email transmission shall constitute delivery hereof.
32. 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.
33. The Parties hereto agree to execute and deliver any further documents or assurances necessary or desirable to give effect to the permission hereby granted.
34. 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 set their hands and corporate seals attested by the hands of their respective officers duly authorized on their behalf.



Witness



Abigail Dawn Pawson



Witness



William George Pawson

THE CORPORATION OF THE MUNICIPALITY OF KINCARDINE

Per: _____
Kenneth Craig, Mayor

Per: _____
Jennifer Lawrie, Clerk

We have the authority to bind the Corporation.

Schedule "A"

The Encroachment and location of same is identified in a Sketch Entitled "Pawson Encroachment" which is available for viewing at the Municipal office.

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