

NO. 2019 -

**BEING A BY-LAW TO AUTHORIZE THE SIGNING OF AN AGREEMENT TO
PERMIT AN ENCROACHMENT ONTO MUNICIPAL PROPERTY
(51 Whippoorwill)**

WHEREAS Section 11 (3) of the Municipal Act, 2001, 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;

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 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 the Council of The Corporation of the Municipality of Kincardine **ENACTS** as follows:

1. The owners of Lot 27, Concession 'A', known municipally as 51 Whippoorwill Lane (geographic Township of Kincardine), Municipality of Kincardine, 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 boat house, 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 CAO be authorized to execute, on behalf of the Council of The Corporation of the Municipality of Kincardine, the Encroachment Agreement with Christopher Thomson and Miriam Thomson.
4. This by-law may be cited as the "Thomson 2019 Encroachment Agreement (51 Whippoorwill Lane) By-law".

READ a FIRST and SECOND TIME this 3rd day of June, 2019.

READ a THIRD TIME and FINALLY PASSED this 3rd day of June, 2019.

Mayor

Clerk

2. 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 municipal property.
3. The Licensee shall at its own cost, charge and expense and to the satisfaction of the Municipality:
 - (i) Keep and maintain the Encroachment in a good and proper state of repair and safety;
 - (ii) Make no additions or modifications to the Encroachment which are not authorized or contemplated by this agreement; and
 - (iii) Comply with such further and additional requirements, as may be required by the Municipality, acting reasonably.
4. 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, or the Municipality's own negligence or willful misconduct.
5. 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:
 1. 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;
 - b) A thirty (30) day written notice of cancellation
 2. The Licensee shall provide the Municipality with a valid Certificate of Insurance as evidence of the above coverages upon signing the Agreement. The Licensee shall provide the Municipality with any renewal replacement certificates as may be necessary during the term of the Agreement.
6. 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 municipal property, 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 municipal property, as determined by the Municipality at the cost, charge and expense of the Licensee and the certificate 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.

7. Nothing contained herein shall be construed as giving to the Licensee anything more than permission to erect and maintain the Encroachment until such time as this agreement expires or is terminated or the removal of such Encroachment may be required as provided.
8. The parties acknowledge and agree that no length of time of, or enjoyment by the Licensee of the permission granted herein shall ensure to, or give any right, title or interest to the Licensee or its successors in title, of the municipal property or any right to maintain the proposed Encroachment upon the municipal property, or shall deprive the Municipality by the operation of any limitation period or otherwise of any right to require the removal of the Encroachment or any restoration of the municipal property to the satisfaction of the Municipality at the Licensee's expense.
9. The Licensee hereby covenants and agrees that at the time that the Encroachment is removed in whole or in part, or is in need of replacement, and in any event, upon the expiry or termination of this agreement, that the works formerly comprising such Encroachment shall be removed, at the Licensee's sole expense, so that they are located entirely off the municipal property and at such time, this agreement shall become null and void and be of no further effect.
10. The Licensee covenants and agrees that the Municipality, and its respective officers, servants, workers, employees, agents and contractors under its control or supervision or any of them shall have the right from time to time and at all reasonable times during the currency of this agreement, to enter in and upon the lands described in Schedule "A" or any part thereof, with all necessary workers, plant, equipment and material for the purpose of inspecting, altering or removing the Encroachment from the municipal property 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.
11. The parties acknowledge and agree that this License does not in any way whatsoever diminish the rights of 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 municipal property 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.
12. The Licensee agrees that any and all costs, sums and expenses paid, incurred or sustained by the Municipality as herein provided shall form and constitute a charge or lien on the lands set out in Schedule "A" attached hereto, until fully paid.
13. The Licensee covenants and agrees not to assign or to transfer this agreement to any successor or assignee of the premises described in Schedule "A" 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 and premises described in Schedule "A" shall have the benefit of and be liable for performance of the obligations contained in this agreement.

- 14. 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 7 days following the date when it was handed to the post office.
- 15. The Licensee agrees to pay 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.
- 16. The Licensee shall, at all times during the life of this license 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.
- 17. This agreement and everything herein contained shall run with the lands described in Schedule "A" and inure to the benefit of and be binding upon the parties, their heirs, executors, administrators, successors and assigns.
- 18. This agreement shall be read with all changes of gender or number required by the context.

IN WITNESS WHEREOF the parties have set their hands and corporate seals attested by the hands of their respective officers duly authorized in that behalf.

Witness Date

Christopher Thomson Date

Witness Date

Miriam Thomson Date

THE CORPORATION OF THE
MUNICIPALITY OF KINCARDINE

Per: _____
Anne Eadie, Mayor

Per: _____
Sharon Chambers, CAO

We have the authority to bind the
Corporation.

Schedule 'A'
To
Encroachment Agreement for Thomson

Part Lot 27, Concession 'A', known municipally as 51 Whippoorwill Lane,
Municipality of Kincardine, (geographic Township of Kincardine)

