

ENCROACHMENT AGREEMENT

AG1050

THIS AGREEMENT DATED the 1st day of July 2022.

BETWEEN:

CITY OF PORT MOODY, a municipal corporation incorporated under the *Local Government Act*, R.S.B.C. 1996, c. 323 and having an office at:

100 Newport Drive
Port Moody, B.C., V3H 5C3

(the "City")

AND: Patrick & Alicia O'Brien
472 Beatrice Street Lane
Port Moody, BC V3H 2Y8

(the "Property Owner")

WHEREAS:

A. The Property Owner is the registered owner of the lands and premises in the City of Port Moody which is legally described as follows:

LT 1, BLK 37, PL NWP2589, DL 347, NWD
LOT 1, BLOCK 37, PLAN NWP2589, DISTRICT LOT 347, NEW WEST DISTRICT

(the "Property Owner's Property")

B. The Property Owner has requested permission from the City to encroach upon lands which the City possesses for the benefit of the public, which land is shown on the sketch attached as Appendix "I" showing the location of a workshop, concrete block retaining wall, fencing and landscape features along side the Property Owner's Property.

(the "Property")

C. The Property Owner wishes to encroach onto the Property for the maintenance of a workshop, concrete block retaining wall, fencing and landscape features on the Property and has asked the City to grant its permission to the Property Owner to maintain the workshop, concrete block retaining wall, fencing and landscape features on the Property;

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the premises and covenants herein contained, and the sum of one hundred and eighty-five dollars and eighty-five cents (\$377.70) representing the first annual payment now paid by the Property Owner to the City, the receipt of which is hereby acknowledged by the City, the parties agree as follows:

1. **Permission to Encroach** - The City hereby grants to the Property Owner permission to encroach upon land shown on the sketch attached identified as Appendix "I" to this Agreement showing the location of the workshop, concrete block retaining wall, fencing and landscape features along the side of the Property Owner's Property (the "Encroachment Area") in the City for the sole purpose of maintaining the workshop, concrete block retaining wall, fencing and landscape features.
2. **Term** - This Agreement shall be in place for ten (10) years, from July 1, 2022, to June 30, 2032 unless terminated sooner pursuant to the terms of this Agreement.
3. **Fee for Use** – The Property Owner agrees to pay to the City, upon execution of this Agreement and on every anniversary on that date until the Term of the Agreement expires, an annual fee for the use of the Encroachment Area, payable in annual instalments. The fee for use is calculated annually in accordance with the formula set out in Appendix "II" to this Agreement.
4. **Administrative Fee** - The Property Owner agrees to pay to the City, upon execution of this Agreement an administrative fee of \$660.00 plus taxes which applies for the term of this Agreement. A renewal fee of 50% of the Encroachment Administrative Fee as determined by the City of Port Moody Fees Bylaw will be due upon renewal.
5. The Property Owner shall at all times keep and maintain the Encroachment area including all the encroachments in good and sufficient repair to the satisfaction of the Director of Planning and Development Services.
6. **Relocation** - If any property, under or on which any part of the Encroachment is constructed, is required for the installation of municipal utilities or other municipal purposes such that the removal or relocation of the Encroachment or a portion of the Encroachment is, in the opinion of the Director of Planning and Development Services, required, the Director of Planning and Development Services may give the Property Owner notice and the Property Owner shall forthwith after receipt of such notice remove or relocate the Encroachment or the portion of the Encroachment affected, all at the sole expense of the Property Owner.
7. **City May Enter** - The City by its authorized agents or employees shall have the right at any and all times to enter into and upon the Encroachment Area for the purpose of constructing, maintaining and inspecting or removing any public works or utilities.
8. **Indemnification** - The Property Owner shall indemnify and save harmless the City and its employees from and against all actions, proceedings, claims and demands by any person and shall reimburse the City for all damages and expenses caused or contributed to by the negligence or other default of the Property Owner in respect of anything done pursuant or ostensibly pursuant to this Agreement including without limitation the construction, operation, maintenance and repair of the Encroachment, except where caused by the City's negligence.
9. **Notice** - Any notice required or allowed to be given under this Agreement shall be deemed to have been given to the party to whom it is addressed if it is mailed in British Columbia, in a prepaid envelope addressed to the address of the party as set out on page one (1) of this Agreement and any notice, demand or request so given shall be deemed to have been received and given five (5) days after the date of mailing. Alternatively, any notice under this Agreement may be delivered by hand and shall be deemed to be received upon the day of delivery. In the case of notices to the City, notices must be to the attention of the City Clerk.

- 10. Enurement** - This Agreement shall enure to the benefit of and be binding on the parties and their respective successors and permitted assigns.
- 11. Insurance** - The Property Owner covenants and agrees with the City that the Property Owner shall maintain at its sole expense comprehensive general liability insurance providing coverage for acts or omissions by the Property Owner, its employees and agents in the amount of not less than \$2,000,000 per occurrence, all inclusive, and the insurance policy shall;
- a) be issued by an insurance company entitled under provincial law to carry on business in British Columbia;
 - b) state that the policy;
 - i) cannot be cancelled, lapsed or materially changed without thirty (30) days written notice to the City;
 - c) be maintained for a period ending twelve months after this Agreement is terminated; and,
 - d) not include any deductible amount greater than \$5,000.00 per occurrence.
- 12. Copies of Policies** - The Property Owner shall provide the Corporate Officer with a copy of the required policy upon execution of the agreement and shall thereafter provide copies of any annual renewals and any amendment to the policy.
- 13. Replacement Insurance** - In the event the Property Owner fails to maintain insurance as required by this Agreement, the City in its sole discretion may after seven (7) days' notice to the Property Owner, obtain such insurance in whole or in part. If the City obtains such insurance, the Property Owner shall reimburse the City for the cost of that insurance within fifteen (15) days of receiving written notice to do so from the City.
- 14. Survival of Terms** - The indemnification, release and insurance obligations of the Property Owner under this Agreement shall survive any termination of this Agreement in relation to any event first arising or commencing on or before the date of termination of this Agreement.
- 15. Termination** - The Property Owner understands and agrees that the City may at any time, in its sole discretion, withdraw the rights it has granted herein to the Property Owner by giving thirty (30) days notice to the Property Owner in writing. In the event of such withdrawal, for any cause or reason whatsoever, the Property Owner shall, at its own expense, within such time as may be specified by the City, remove the Encroachment and fill up any excavation made, constructed or maintained with respect to it, and otherwise restore the Encroachment Area to its original state to the satisfaction of the Director of Planning and Development Services.
- 16. Removal of Fixtures and Chattels** - If the Property Owner fails to clear the Encroachment Area as required under this Agreement, the City and its agents may remove all fixtures, chattels, improvements, personal property and all other things on the Encroachment Area. The cost of such removal and any deficiency will be a debt due and owing to the City by the Property Owner upon receipt by the Property Owner of the City's invoice for the deficiency.

17. **Release** - The Property Owner releases and forever discharges the City and its employees from all manner of claims of any nature whatsoever which may arise by reason of or in connection with the performance or non-performance of this Agreement by the City.
18. **Remedies** - Notwithstanding the other remedies provided in this Agreement, 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 license granted by this Agreement.
19. **Compensation** - Notwithstanding any provision of the Agreement, the Property Owner shall not be entitled to compensation for injurious affection or disturbance resulting in any way from the removal of the Encroachment and, without limitation, shall not be entitled to business losses, loss of profit, loss of market value, relocation costs or other consequential loss by reason of the removal of the Encroachment or by reason of the termination of this Agreement.
20. **Compliance with Other Laws** - Nothing in this Agreement exempts the Property Owner from complying with all applicable laws, including all municipal bylaws, or from obtaining all required permits and licenses relating to the use of the Encroachment Area or the Encroachment.
21. **Interest in Land** - This Agreement grants no interest in land in the Encroachment Area to the Property Owner.
22. **Further Assurances** - The parties shall execute and do all such further deeds, acts, things, and assurances as may be reasonably required to carry out the intent of this Agreement.
23. **Waiver** - Waiver of any default by either party shall not be deemed to be a waiver of any subsequent default.
24. **Interpretation** - 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 requires.
25. **References** - Every reference to each party is deemed to include the heirs, executors, administrators, permitted assigns, employees, servants, agents, contractors, officers, directors and invitees of such party, where the context so permits or requires.
26. **Severance** - 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. **Sale or Alienation of Land** - The Property Owner shall not 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, without the written consent of the City. This Agreement shall terminate upon any sale, transfer or alienation of the Property Owner's interest in or to the Lands by the Property Owner, such termination effective as of the date of transfer, and all provisions relating to the removal of the Encroachment and restoration of the Encroachment Area shall apply, unless the transferee of the Lands enters into a satisfactory agreement with the City prior to the transfer date of the Lands.
28. **Entire Agreement** - 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.

29. Time of Essence - Time is of the essence of this Agreement.

30. Governing Law - 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 day and year first above written.

CITY OF PORT MOODY, by its authorized signatories:

Robert Vagramov
Mayor

Patrick O'Brien
472 Beatrice Street Lane
Port Moody, V3H 2Y8

Witness Name:
Address:

Alicia O'Brien
472 Beatrice Street Lane
Port Moody, V3H 2Y8

Tracey Takahashi
Corporate Officer

Witness Name:
Address:

Witness Name:
Address:

PROPERTY OWNER, by its authorized signatories:

APPENDIX "I" - Encroachment Area



APPENDIX “II”

Residential Property Encroachment Fee Formula:

Fee Formula:

Annual Encroachment Licence Fee = (Average assessed value per square metre for all RS1 lots between 555m² and 850m²) x (square metre area of *encroachment*) x (0.5% or 0.25% depending on nature of *encroachment*)

The Fee payable by the Property Owner will be calculated by the City as follows:

- The City uses the prior year’s assessed value for each RS1 lot in the City having recorded gross land area between 555m² and 850m², divides each lot by its lot size in square meters and determines the average assessed value per square meter for all lots between 555m² and 850 m²
- The average assessed value per square metre is multiplied by the encroached area occupied by the Property Owner (in square metres). The figure is then multiplied by 0.5% or 0.25% depending on the nature of the *encroachment*.
- For substantial structures such as part of a principal dwelling, carport, garage, retaining wall or swimming pool and cabana including surrounding walks and paved areas which facilitate directly or indirectly the use of such structures, the annual fee shall be multiplied by 0.5%.
- For an area used exclusively so as to deny public access (fencing, hedges or other means) for additional landscaped/vegetable garden area and which may be improved by lesser structures such as a storage shed, deck, stairs, walkway, children’s play equipment or other similar improvements of exclusive use, the annual fee shall be multiplied by 0.25%.
- The minimum annual *encroachment* fee is \$100.00.
- The City reserves the right to adjust the fee formula on a case-by-case basis as warranted.

Encroachment Licence Fee for 472 Beatrice Street Lane:

The annual fee payable by the owner is as follows:

= (Average assessed value per square metre for all RS1 lots between 555m² and 850m²) x (square metre area of *encroachment*) x (0.5% or 0.25% depending on nature of *encroachment*)

= (\$1573.75/m²)(48m²)(0.5%)

= \$377.70 for July 1st 2022 through to June 30th 2032 and adjusted annually based on the average assessed value per square metre for all RS1 lots between 555m² and 850m²) x (square metre area of *encroachment*) x (0.5%).