

Attachment 2

Draft Encroachment Agreement

TERMS OF INSTRUMENT – PART 2

EASEMENT RE ENCROACHMENT OVER HIGHWAY (RETAINING WALL AND STAIRS)

THIS AGREEMENT dated for reference the day of 2025 is

BETWEEN:

THE CORPORATION OF THE CITY OF NEW WESTMINSTER, 511 Royal Avenue, New Westminster, British Columbia, V3L 1H9

(the “City”)

AND:

BENOIT RAYMOND SOREL and CARMEN MICHELLE DUNN (AS JOINT TENANTS), 614 Fourth Ave, New Westminster, British Columbia, V3M 1S4

(the “**Owners**”)

WHEREAS:

- A. The Owners are the registered owners in fee simple of the land in New Westminster, British Columbia, legally described as:

PID: 009-295-241

NORTH WESTERLY 41 FEET BY 108.5 FEET LOT 11 OF LOTS 8, 9 AND 35 TO 38 SUBURBAN BLOCK 6 PLAN 2620 HAVING A FRONTAGE OF 41 FEET ON FOURTH AVENUE BY UNIFORM DEPTH OF 108.5 FEET AND ADJOINING A 20 FOOT LANE

(the “**Land**”);

- B. Located on the Land is a concrete retaining wall and concrete stairs (the “**Encroachment**”) that currently encroach onto the City owned lane (the “**Highway**”);
- C. Section 35(11) of the *Community Charter* (British Columbia) authorizes the City Council to grant an easement or permit an encroachment in respect of a highway;
- D. The City has agreed to grant the Owners an easement over those portions of the Highway labeled as “Concrete Retaining Wall” and “Concrete Steps” on the southwest corner of the Land on the Survey Plan prepared by Joe Coelho, B.C.L.S., a reduced copy of which plan is attached to this Agreement as Schedule “A” (the “**Easement Area**”), to allow for the continued encroachment of the Encroachment on the terms and conditions of this Agreement.

NOW THEREFORE this Agreement is evidence that in consideration of the mutual covenants contained herein, the payment of the encroachment fee set out herein by the Owners to the City,

and other good and valuable consideration (the receipt and sufficiency of which is acknowledged by each of the parties), the City and Owners agree as follows:

Permission to Encroach

1. The City hereby grants to the Owners and their employees, contractors, agents, tenants, guests, invitees, and licensees the non-exclusive right, license, liberty, easement, privilege and permission to use and occupy the Easement Area for the sole purpose of maintaining, repairing, inspecting, replacing, operating, and using the Encroachment and to do all acts which are reasonably necessary, desirable or incidental to the use of the Easement Area as permitted herein and the exercise of the rights granted hereby.
2. The Owners agree to pay the City \$1 (one dollar) for the use of the easement until the agreement is terminated.

No Other Encroachments

3. The Owners shall not erect any structure or encroachment in the Easement Area other than the Encroachment and the Owners shall not cause, permit, or allow the Encroachment to encroach on any part of the Highway other than the Easement Area.
4. The Owners shall not add to or structurally alter the Encroachment without first obtaining the written authorization of the City, with the City having the right and power at all times to grant or withhold the same.

Acknowledgement of Highway

5. The Owners acknowledge and agree that:
 - (a) the Easement Area is a highway and that the City has limited power to authorize the private use of a highway;
 - (b) any rights granted by the City to the Owners are not exclusive and subject to the public's right to pass and repass over the Highway; and
 - (c) the City may require the Owners to, at their own expense, remove the Encroachment and any supporting structures or landscaping from the Easement Area, or relocate or reconstruct the Encroachment at any time in accordance with this Agreement, without compensation to the Owners.

No City Representations

6. The Owners acknowledge and agree that the City, either itself or through its officers, servants, employees, or agents, has not made and the Owners have not relied upon, any representations from the City, its officers, servants, employees, or agents as to the

effectiveness of the Encroachment, the suitability of the Easement Area for use by the Owner or any other matter.

No Restriction on City Activities

7. Without limiting section 4, the Owners acknowledge and agree that this Agreement shall not in any way restrict the right of the City to at any time:
- (a) improve, maintain, widen, raise, lower or otherwise alter the Highway;
 - (b) inspect, install, improve, maintain or alter any structure, service or utility on, over or under any portion of the Highway, including the Encroachment; or
 - (c) permit other encroachments or use of the Highway and the Easement Area,
- notwithstanding the effect of such activities on the Encroachment and the Easement Area.

Owners' Covenants

8. The Owners covenant and agree to:
- (a) comply with all applicable federal, provincial and municipal laws, statutes, regulations, orders, bylaws, permits, rules and lawful requirements ("Laws") including Laws with respect to environmental protection ("Environmental Laws") relating in any manner to the inspection, maintenance, repair and replacement of the Encroachment;
 - (b) not bring, release, introduce, store, use or keep on the Highway any contaminants or substances prohibited or regulated by Environmental Laws;
 - (c) not unduly disrupt or interfere with the use of the Highway by the City and all those invited by the City to use the Highway, including the public generally;
 - (d) use the Easement Area and maintain and repair the Encroachment at its own expense in a good and workmanlike manner in order to cause no unnecessary damage or disturbance to the City and all those invited by the City to use the Highway or any other improvements on or under the Highway;
 - (e) do everything necessary to ensure that the Encroachment in the Easement Area is safe for public passage to the satisfaction of the City; and
 - (f) exercise the utmost care not to damage the Highway or any other improvement on the Highway and, if the Owners should cause any such damage, restore such damage to the Highway or other improvements thereon to as close to their pre-damaged condition as is reasonably practical with reasonable dispatch.

Encroachment Fees and Annual Charges

Costs

9. In addition to the fees and annual charges set out in this Agreement, the Owners shall be responsible for all costs, payments, outlays and expenses with respect to any and all engineering, survey, legal services, maintenance, repair, removal, replacement, relocation, cleaning, or servicing associated with the Encroachment and this Agreement.

Required Repairs

10. The City may at any time inspect the Encroachment and the Owners shall immediately conduct any repairs or maintenance to the Encroachment as directed by the City. Despite the fact that the City may require repairs to the Encroachment, the City is not responsible for the condition or safety of the Encroachment and the City is not required to give any notices to repair.

Disruption of Public Travel

11. The Owners shall give the City notice of its intention to undertake any work to the Encroachment which may disrupt public travel along the Highway and the Owners shall only undertake such work at those times and dates and under those conditions authorized by the City. In any event, the Owners shall use all reasonable efforts to minimize disruption and inconvenience to the public and where necessary for public safety, the Owners shall place and maintain warning signs, barricades, lights and flares as will give clear warning and protection to the public.

Relocation

12. If in the opinion of the City any part of the Easement Area is required for any highway purposes such that relocation or reconstruction of the Encroachment, or a portion of the Encroachment, is required, the City may give the Owners notice and the Owners shall at their own cost, within 90 days after receipt of such notice from the City, relocate or reconstruct the Encroachment and restore that part of the Easement Area in accordance with any requirements or specifications set by the City and all applicable statutes, enactments, bylaws, codes, regulations and orders from time to time in force.

Termination Without Cause

13. The Owners acknowledge and agree that the City may in its sole discretion, with written notice, at any time terminate this Agreement and withdraw the rights it has granted herein to the Owners for any or no cause or reason whatsoever. In the event of such withdrawal, the Owners shall remove the Encroachment and restore the Easement Area to the standard required by this Agreement.

Termination for Default

14. In the event that the Owners breach any term, condition, covenant or provision of this Agreement, the Owners shall remedy the breach within 15 days of receipt of a notice from the City (or such longer time specified by the City) and if the breach is not remedied to the satisfaction of the City within the time specified, all rights accruing to the Owners under this Agreement shall terminate and the Owners shall remove the Encroachment and restore the Easement Area to the standard required by this Agreement.

Emergency Removal

15. The Owners grant to the City the right to, at any time, in the case of an emergency or apprehended emergency, as determined by the City, to remove the Encroachment or any hazard to the public resulting from the Encroachment, without prior notice to the Owners, at the sole expense of the Owners.

Restoration

16. Upon the termination of this Agreement, the Owners at their own expense shall immediately remove the Encroachment and restore the Easement Area, and any portion of the Highway affected by the removal of the Encroachment, to a safe and clean state in accordance with any requirements or specifications set by the City and all applicable statutes, enactments, bylaws, codes, regulations, and orders from time to time in force.

Action by City

17. If the Owners fail to carry out or perform any action required of them under this Agreement, the City, in their sole discretion, is entitled to take all such actions on the Owners' behalf and at the Owners' expense, including removal of the Encroachment and restoration of the Easement Area.
18. Notwithstanding section 17, the Owners acknowledge and agree that the City has no obligation to take action on the Owners behalf with respect to the Easement Area and the Encroachment, and is in no way liable for:
 - (a) failing to take action on the Owners' behalf; or
 - (b) any action that it may decide to take on the Owners' behalf.

Compensation

19. Notwithstanding any provision of this Agreement, the Owners shall not be entitled to compensation for injurious affection or disturbance resulting in any way from the removal of the Encroachment and, without limitation, the Owners 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 revocation of the permission to encroach granted under this Agreement.

Compliance with Laws

20. The Owners shall at all times carry on and conduct their activities on the Easement Area in compliance with any and all statutes, enactments, bylaws, codes, regulations and orders from time to time in force, which includes, but is not limited to, obtaining and maintaining any and all required approvals, permits and licenses thereunder and abstaining from doing or omitting to do anything upon or from the Easement Area in contravention thereof.

Release and Indemnity

21. The Owners hereby release the City, its elected officials, officers, employees, contractors, and agents from all actions, proceedings, claims, demands, fines, debts, costs (including fees of solicitors and other professional advisors), expenses, and other harm of whatever kind which the Owners may at any time incur due to or related to or arising from the existence or use of the Encroachment or Easement Area or the granting of this Agreement or any act or omission, whether or not negligent, of the City pursuant to this Agreement.
22. The Owners hereby indemnify and save harmless the City, its elected officials, officers, employees, contractors, and agents from all actions, proceedings, claims, demands, fines, debts, costs (including fees of solicitors and other professional advisors), expenses, and other harm of whatever kind which may at any time be suffered or incurred by the City, its elected officials, officers, employees, contractors, and agents by reason of, arising from or in any way relating to the existence or use of the Encroachment or Easement Area, the granting of this Agreement, or the acts, omissions, negligence or default (including breach of bylaws) of the Owners, their employees, tenants, invitees, guests, contractors, licensees and others for whom it is responsible.
23. No provision of this Agreement and no act or omission or finding of negligence as against the City, in favour of any third party, shall relieve the Owners from liability to the City.
24. The obligations of the Owners to release and indemnify the City contained in this Agreement shall survive termination of this Agreement.

Notice of Incidents

25. The Owners must immediately give notice to the City of any accident, incident or abnormal occurrence on or around the Easement Area or involving the Encroachment.

Insurance

26. The Owner shall at its expense take out and maintain at all times throughout the term of this Agreement a policy of comprehensive general liability insurance providing coverage on an occurrence basis for all potential losses occurring by virtue of the Owner's use and

occupation of the Easement Area or by virtue of this Agreement, in an amount of not less than Two Million (\$2,000,000.00) Dollars per occurrence, which policy names the City as an additional insured.

The policy shall include the following terms:

- (a) it cannot be cancelled or altered without thirty (30) days prior notice to the City;
- (b) a cross liability provision such that the City and Owner are each insured as if each had purchased the policy of insurance; and
- (c) that the City is protected notwithstanding any act, neglect or misrepresentation of the Owner which might otherwise result in the avoidance of a claim under such policies and that such policies shall not be affected or invalidated by any act, omission or negligence of any third party which is not within the knowledge or control of the City;

A copy of which policy (or certificate of insurance) must be delivered to the City at the time of execution of this Agreement and at other times required by the City.

Notwithstanding anything in this section, the City, acting reasonably, may from time to time notify the Owner that the limit of the policy of insurance held by the Owner shall be increased, and the Owner shall, within sixty (60) days of receiving such notice cause the amount of insurance to be so increased and deliver written confirmation of such increase.

Waiver

- 27. No waiver by the City of any requirement or breach of this Agreement shall be effective unless it is an express waiver in writing that specifically references the requirement or breach and no such waiver shall operate as a waiver of any other requirement or breach or any continuing breach of this Agreement.

Powers Preserved

- 28. Nothing contained or implied herein shall prejudice or affect the rights and powers of the City in the exercise of its functions pursuant to the *Local Government Act* (British Columbia) or the *Community Charter* (British Columbia) or its rights and powers under all of its public and private statutes, bylaws, orders and regulations.

Notice

- 29. Any notice to be given pursuant to this Agreement shall be in writing and delivered personally or sent by prepaid registered mail to the addresses set out above, with such notice being deemed to be sufficiently given:
 - (a) on the same day that it is delivered personally to the other party; or

(b) five (5) days after it is mailed by deposit at a Canada Post mailing point or office,

and a party may only change its address for delivery of notices under this section by giving notice to the other party in accordance with this section.

Joint and Several

30. If at any time more than one person owns the Land, each of those persons will be jointly and severally liable for all of the obligations of the Owners under this Agreement.

Interpretation

31. In this Agreement, “person” includes a corporation, firm or association and wherever the singular or masculine form is used in this Agreement it will be construed as the plural or feminine or neuter form, as the case may be, and vice versa where the context or the parties so require.
32. The headings to the clauses in this Agreement have been inserted as a matter of convenience and for reference only and in no way define, limit or enlarge the scope or meaning of this Agreement or any provision of it.
33. The City and the Owners agree that all of the provisions of this Agreement are to be construed as covenants and agreements as though the words imparting such covenants and agreements were used in each separate provision.
34. This Agreement shall be exclusively governed by and construed in accordance with the laws in force in the Province of British Columbia.
35. If any part of this Agreement is for any reason held to be invalid by a decision of a court with the jurisdiction to do so, the invalid portion is to be considered severed from the rest of this Agreement and the decision that it is invalid shall not affect the validity or enforceability of the remainder of this Agreement.
36. Time shall be of the essence of this Agreement.

Miscellaneous

37. This Agreement is the entire agreement between the City and the Owners regarding its subject matter and the City has made no representations, warranties, promises, covenants or agreements (oral or otherwise) to or with the Owners other than those expressed in this Agreement.
38. This Agreement may only be modified or amended by written agreement duly executed by all parties.

39. The parties shall do and cause to be done all things and execute and cause to be executed all documents that may be necessary to give proper effect to the intention of this Agreement.
40. This Agreement will enure to the benefit of and be binding on the parties and their respective corporate successors, successors in title, heirs, executors, administrators, and personal representatives, notwithstanding any rule of law or equity to the contrary.

41. This Agreement may be executed in any number of counterparts and delivered by e-mail, each of which shall be deemed to be an original and all of which taken together shall be deemed to constitute one and the same instrument, provided that any party delivering this Agreement by e-mail shall also deliver to the other party an originally executed copy of this Agreement.

IN WITNESS WHEREOF the parties hereto have executed this Agreement below.

THE CORPORATION OF THE CITY OF NEW WESTMINSTER

by its authorized signatories:

Mayor:

Corporate Officer:

Signed, Sealed and Delivered in the)
presence of:)

Benoit Sorel)
_____))

Name:)

614 Fourth avenue,)
New Westminster V3M 1S4)

Address)

Businessman)
_____))

Occupation)

BENOIT RAYMOND SOREL

Signed, Sealed and Delivered in the)
presence of:)

Carmen Dunn)
_____))

Name:)

614 Fourth avenue,)
New Westminster V3M 1S4)

Address)

Nutritionist)
_____))

Occupation)

CARMEN MICHELLE DUNN

DRAFT

SCHEDULE "A"

Sealed Survey of the Property