

ENCROACHMENT AGREEMENT

THIS ENCROACHMENT AGREEMENT is made this day of July, 2023.

Between:

THE CORPORATION OF THE MUNICIPALITY OF WEST ELGIN

(“West Elgin”)

- and -

IAN ANDERSON SCOTT

(“Scott”)

WHEREAS Scott represents that he is the registered owner of certain lands and premises legally described as Pt Lt 15-16 Blk E PI 111 Aldborough as in E409269, Municipality of West Elgin, County of Elgin being P.I.N. 35110-0207 (LT) in the Town of Rodney, in the County of Elgin, known municipally as 151 Maple Street, Rodney, Ontario (the “Scott Property”);

AND WHEREAS West Elgin represents that they are the registered owner of a certain public highway legally described as Ridout St PI 67 Aldborough; Ridout St PI 111 Aldborough; Ridout St PI 128; Ridout St PI 153 Aldborough; West Elgin, County of Elgin being P.I.N. 35110-0391 (LT) (the “West Elgin Property”) in the Town of Rodney, in the County of Elgin, known municipally as Ridout Street;

AND WHEREAS a fence on the Scott Property has, through an oversight, been constructed and is located on the West Elgin Property as shown on the diagram attached as Schedule “A” to this Agreement (the “Encroachment”);

AND WHEREAS the parties have agreed that the Encroachment be allowed to remain and Scott may use the Encroachment for an indefinite period and that such rights of encroachment shall run with the lands and shall be subject to the terms, covenants and provisions of this Agreement;

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the terms and conditions herein and the sum of Two (\$2.00) Dollars now paid by Scott to West Elgin, the receipt and sufficiency of which is hereby acknowledged, West Elgin and Scott covenant and agree as follows:

1. West Elgin and Scott acknowledge and agree that the Encroachment shall be permitted subject to the terms and conditions herein.
2. Scott acknowledges that no representation has been made by West Elgin of any authority to grant the privilege to use and maintain the Encroachment and such use and maintenance by Scott shall at all times be at Scott’s risk.
3. West Elgin and Scott covenant and agree as follows:
 - (a) Scott shall make no alteration to the Encroachment, including without limitation the removal of trees or grade changes, and shall not erect any further building, fence or structures and shall not alter the Encroachment on the West Elgin Property without West Elgin’s written permission;
 - (b) If the Encroachment, building or structure to which the Encroachment is attached, is rebuilt, altered or removed in any way for any reason, Scott shall remove the Encroachment from the West Elgin Property;
 - (c) Scott, as owner of the structure to which an Encroachment is appurtenant, shall at all times maintain and keep the Encroachment and adjacent surface in proper repair at Scott’s expense, in a proper and safe condition, and in compliance with the West Elgin’s standards. If the Encroachment is not kept in good repair, upon written notice from West Elgin, Scott shall repair the Encroachment and the adjacent surface at Scott’s own expense and to West Elgin’s specifications. If the notice is not complied with within ten (10) days from the date that the notice is sent, West Elgin may repair the Encroachment at the expense of Scott ;

- (d) Scott shall maintain the Encroachment in good condition at all times; and
- (e) Upon removal of the Encroachment from the West Elgin Property, Scott shall maintain and restore the West Elgin Property to the condition that the West Elgin Property was in prior to the date of the Encroachment or in compliance with the standards of West Elgin at Scott's sole expense. In the event such restoration is not made, West Elgin may complete such restoration work at the expense of Scott and recover the expense by any legal means available.

4. Scott hereby agrees that he shall be responsible for any claims arising from the Encroachment. Scott will at all times indemnify and save harmless West Elgin from and against all loss, liability, claims, demands, damages, costs and expenses, including reasonable legal fees and disbursements, which West Elgin may suffer, be put to or incur for or by reason of or on account of the existence of the Encroachment or the entering into of this Agreement or the maintenance of the Encroachment or any other matter or thing relating to the Encroachment.

5. In consideration of West Elgin entering into this Agreement, Scott agrees:

(a) to waive all rights he 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 Scott may have in relation to the Encroachment;

(b) to release and forever discharge West Elgin of and from all actions, causes of action, suits, debts, accounts, covenants, contracts, claims, losses, demands, damages, liabilities, costs and expenses whatsoever which Scott 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 West Elgin in connection with the Encroachment.

Scott acknowledges that West Elgin is relying on this Section 5 in order to enter into this Encroachment Agreement.

6. If Scott defaults in performing any of their obligations under this Agreement, West Elgin shall give written notice to Scott of such default giving Scott ten (10) days to remedy the default, failing which West Elgin may terminate this Agreement by providing Scott with thirty (30) days written notice of termination. Any waiver by West Elgin of any breach by Scott of any provisions of this Agreement shall be without prejudice to the exercise by West Elgin of all or any of its rights or remedies in respect of any continuance or repetition of such breach.

7. Scott hereby agrees that this Encroachment Agreement shall cover the Encroachment described herein and this Encroachment Agreement shall not grant any permission to erect any new part of any new building, fence or structure and shall not provide any implied right on the part of Scott to alter, reconstruct or otherwise change the Encroachment approved by West Elgin in this Agreement.

8. Subject to the other terms of this Agreement, West Elgin shall have the right to terminate this Agreement by providing Scott with not less than sixty (60) days written notice of termination.

9. In the event that this Agreement is terminated, Scott shall remove the Encroachment on the date of termination. If Scott fails to remove the Encroachment on the date of termination, West Elgin shall provide Scott with a notice requiring Scott to remove the Encroachment within ten (10) days. If Scott fails to remove the Encroachment within the ten (10) day period, West Elgin shall have the right to remove the Encroachment at the expense of Scott.

10. Scott hereby agrees to pay all survey costs, legal fees and disbursements and all other costs incurred by West Elgin in connection with this Agreement and the Encroachment. These amounts shall be paid within thirty (30) days of the date Scott receives a notice for payment of such expenses.

11. All notices or other documents required or which may be given under this Agreement shall be in writing duly signed by the party giving such notice and transmitted by personal service, courier

delivery, facsimile transmission or any other electronic transmission, including a scanned version in pdf format, prepaid registered or certified mail to the addresses as set out herein:

<u>West Elgin's Address</u>	<u>Scott's Address</u>
22413 Hoskins Line Rodney, ON N0L 2C0	32151 Walnut Line Iona Station, ON N0L 1P0

Any notice so given shall be deemed to be received on the earlier of the date of the actual receipt and five (5) days after the date of mailing if sent by registered or certified mail. Where notice is given by facsimile transmission or any other electronic transmission, including a scanned version in pdf format, notice is deemed to have been received on the date of transmission. If postal service is interrupted by strike or other irregularity, notice shall not be given by mail during such interruption. Any party may, from time to time, by notice given as provided above, change its address for service.

- 12. This Agreement shall enure to the benefit of, and be binding upon the parties and their respective heirs, administrators, estate trustees, successors and (where permitted) assigns.
- 13. Scott hereby agrees that this Agreement shall be registered on title to the Scott Property and the West Elgin Property. Scott shall take such further actions and execute such further documents that may be necessary to effect such registration.

WITNESS our hand and seal this day of July, 2023.

Witness:

Ian Anderson Scott

THE CORPORATION OF THE MUNICIPALITY
OF WEST ELGIN

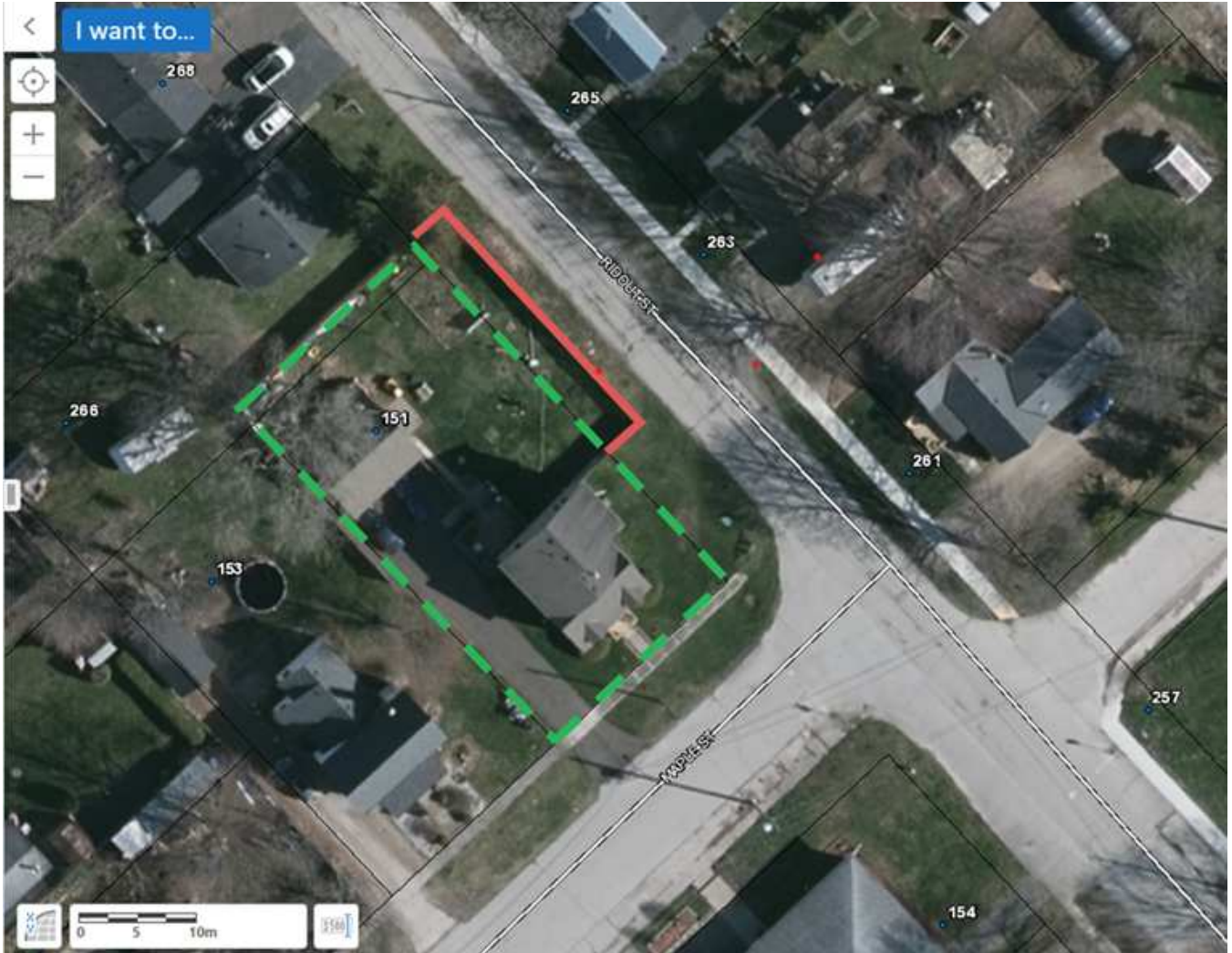
Per: _____
Richard Leatham, Mayor

Per: _____
Terri Towstiuc, Clerk
We have authority to bind the Corporation.

SCHEDULE "A"

Green Dash Line – Property Boundaries of the Scott Property

Red Line – Encroachment onto West Elgin Property



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