



THE VILLAGE OF DUNNOTTAR

Administration

ENCROACHMENT AGREEMENTS

Subject:	Encroachment of Structures on Village Property	Policy No.: General Policy #3 Resolution No.: 259/13
Effective Date:	Immediate	Resolution Date: December 18, 2013
Replaces Policy:	New Policy	Review Date: December 2015

STATEMENT OF GENERAL INTENT:

There are many instances of buildings, decks, fences, or other structures encroaching upon municipally owned lands within the Village of Dunnottar. A number of these encroachments are structures that have been in existence for a substantial amount of time. A further number of these encroachments have been caused by the resurveying of properties

DEFINITIONS:

Council

Shall mean the duly elected Council of the Village of Dunnottar.

POLICY GUIDELINES:

The Council of the Village of Dunnottar adopts the following policy to allow for the entering into of encroachment agreements:

1. Existing encroachment requests must be made in writing and are to include:
 - a. Application fee of \$50.00.
 - b. A copy of the title for the affected property.
 - c. A copy of the building survey, clearly showing the encroachment.
2. Upon the complete filing of a request for an existing encroachment, the Chief Administrative Officer and Mayor may sign the approved agreement with the property owner(s) and that agreement will be sent to the village lawyers to be registered on the title as per the terms of the agreement.
3. New construction will be considered for an encroachment agreement. Requests must be made in writing prior to construction commencing and are to include:
 - a. Application fee of \$50.00.



- b. A copy of the title for the affected property.
 - c. A copy of the building survey, with the proposed encroachment clearly detailed.
4. Upon the complete filing of a request for a new encroachment, the Chief Administrative Officer will include the request on the next regular meeting agenda as per bylaw requirements.
5. Each new encroachment agreement request will be decided on a case by case basis.
6. The following criteria will be used to determine the feasibility of each new encroachment agreement request:
 - a. Does the placement of the structure interfere with the use of the municipally owned land/roadway?
 - b. Type of structure.
 - c. Anticipated life of structure.
 - d. Future needs of the affected public property.
7. In no case, will any encroachment agreement granted be extended to the replacement of the structure for which it was granted.
8. In all cases, any encroachment agreement granted shall contain a clause requiring the property owner to annually show proof of insurance with the municipality named as an insured party under any public liability policy.
9. In all cases, any encroachment agreement granted shall be written by the Village of Dunnottar or its agents and the property owner shall be responsible for all costs in the administration and registering of the aforementioned agreement.



ENCROACHMENT LICENSING AGREEMENT

THIS AGREEMENT made in duplicate as of the ___ day of _____, 20--.

BETWEEN:

THE VILLAGE OF DUNNOTTAR
(hereinafter referred to as the "Grantor"),
-and-

(hereinafter referred to as the "Grantee")

WHEREAS:

- A. The Grantor is the owner of the public reserve more particularly described in Schedule "A" hereto (hereinafter referred to as the "Grantor's Property");
- B. The Grantee is the owner of the property more particularly described in Schedule "B" hereto (hereinafter referred to as the "Grantee's Property");
- C. The Grantee's Property is immediately adjacent to the Grantor's Property;
- D. A - - - fence, deck, garage - - - encroaches on the Grantor's Property;
- E. The parties have agreed to permit the Encroachment as depicted on Schedule "C" to remain as presently located on the Grantor's Property in accordance with and subject to the provisions of this agreement.

NOW THEREFORE, in consideration of the sum of FIFTY DOLLARS (\$50.00) DOLLARS and other good and valuable consideration, the parties agree with each other as follows:

1. The preamble shall form an integral part hereof.
2. The Grantor hereby grants to the Grantee by way of easement, the licence and right to have the Encroachment onto, over and upon the Grantor's Property and the right to maintain the Encroachment, as presently situated, during the term of this agreement.
3. Additionally, the Grantor hereby grants to the Grantee firstly, the right to enter upon, access and use of the Grantor's Property for the distances that may be required to service, repair and maintain the Encroachment and secondly, full power, licence and permission, at any and all times hereafter for the Grantee or any servants, employees or workmen of the Grantee, to enter upon the Grantor's Property for the aforesaid purposes. The Grantee shall provide reasonable notice to the Grantor of its intent to exercise the foregoing.



4. The Grantee shall not acquire any titles by possession or prescription to any of the Grantor's Property, it being specifically agreed that this grant of easement and licence by any such grant shall not create any interest by the Grantee in the Grantor's Property, nor will any such grant of easement create any form of option or enduring interest therein, save and except for the within-described easement.
5. The Grantee shall exercise its rights, licences and easements hereby granted in a careful and workmanlike manner so as to cause a minimum of loss, damage, inconvenience or interference to the Grantor, and shall make good or otherwise adequately compensate the Grantor for any such loss, damage, inconvenience or interference. The Grantee hereby indemnifies and saves the Grantor harmless of and from any and all liabilities of any nature or kind relating to or arising from the grant of easement, the maintenance, repair, use or removal of the Encroachment caused by the Grantee or its servants, agents or employees, and from and against any damage to the Grantor's Property and any structures or improvements now or hereafter situated thereon, which may be caused by virtue of the Grantee exercising the rights, powers licences and permissions herein granted to it, or its servants, agents or employees. The foregoing indemnity shall survive the termination of this Agreement.
6. **The Grantee shall provide the Village of Dunnottar, on no less than an annual basis, with proof of liability insurance coverage for the said site in an amount of not less than Two Million Dollars (\$2,000,000) and shall name the Village of Dunnottar as an additional insured on the policy.**
7. All of the rights, licences, covenants, easements and agreements herein set forth shall run with the titles to the Grantor's Property and shall enure to the benefit of and be binding upon the parties hereto and their respective heirs, personal representatives, successors in titles and assigns. **The Grantor will register this document by way of caveat on title and the Grantee shall reimburse the Grantor all costs incurred in this transaction.**
8. The Grantee covenants and agrees with the Grantor that it will not accept an offer from or enter into an agreement with, any third party whereby the Grantee agrees to sell, transfer, lease, assign or otherwise part with any of its right, titles, estate or interest in the Grantee's Property, in whole or in part, unless the offer is conditional on:
 - (a) such third party agreeing, by written instrument, in a form satisfactory to the Grantor, acting reasonably, to be bound by this Agreement and to assume all of the obligations and responsibilities of the Grantee under this Agreement; and



(b) the Grantor consenting to such assumption by the third party, such consent not to be unreasonably withheld.

If such consent is provided, the Grantee shall provide to the Grantor true and complete signed copy of the written instrument concurrent with the closing of the transaction with the third party. If such consent is not granted and the Grantee completes the transaction with the third party, then the Grantee shall forthwith remove the Encroachment in accordance with section 8 and this Agreement shall terminate save and except for the indemnity obligation of the Grantee, which shall continue.

9. This Agreement shall terminate upon the earlier of:
- (a) the Grantor providing written notice of the termination of this Agreement to the Grantee;
 - or
 - (b) the date the Encroachment is removed from the Grantor's Property.

If the Grantor provides such written notice of termination, the Grantee shall remove the Encroachment at its own cost by no later than sixty (60) days from its receipt of such written notice. The Grantee shall repair any damage caused to the Grantor's Property upon the removal of the Encroachment to the satisfaction of the Grantor, acting reasonably, including without limiting the generality of the foregoing, cleaning up any environmental damage caused to the Grantor's Property by the Encroachment and its removal so as to comply with environmental laws and regulations applicable to the removal of the Encroachment. Any caveat filed by either of the parties hereto, giving notices of this Agreement shall be promptly removed on the termination of this Agreement, at the cost of the Grantee.

10. Any notice required or permitted to be given herein shall be effectively given, in writing, and mailed or delivered to the parties at the addresses hereinafter set out:

Grantor:
The Village of Dunnottar
44 Whytewold Road
Box 321
Matlock, Manitoba R0C 2B0

Grantee:



If such notice is mailed it shall be sent by registered mail, postage fee paid and notice shall be deemed to be given on the fourth business day following that of which the letter containing the notice is posted. The parties hereto covenant and agree to provide each other with any change in address, whereupon such address shall become the official address for the notification requirements.

11. This agreement constitutes the entire Agreement between the parties and time shall be of the essence of this Agreement.
12. This Agreement shall be construed and interpreted and enforced in accordance with the laws of Manitoba.
13. Each provision of this Agreement is intended to be severable and if any term or provision of this Agreement is determined to be invalid, or illegal, for any reason whatsoever, such invalidity or illegality shall not affect the validity of the remainder of this Agreement.

IN WITNESS WHEREOF the parties hereto have duly executed the Agreement the day and year first above written.

VILLAGE OF DUNNOTTAR

Mayor

Chief Administrative Officer

SIGNED, SEALED AND DELIVERED

In the presence of:

Witness

Witness



SCHEDULE "B"

GRANTEE'S PROPERTY

Roll No.

Civic Address:

Certificate of Title No.:

Legal: