THE CORPORATION OF THE TOWN OF GODERICH
BY-LAW NO. 90 OF 2020

BEING A BY-LAW TO AUTHORIZE AN ENCROACHMENT AGREEMENT BETWEEN PAUL DERRICK CHISHOLM AND ALBERTA LYNN CHISHOLM (HEREINAFTER CALLED THE OWNERS) AND THE CORPORATION OF THE TOWN OF GODERICH (HEREINAFTER CALLED THE TOWN)

WHEREAS The Owners represent that they are the joint tenants (owners) of lands legally described as Plan 457 Office Reserve Lot 1, Town of Goderich, County of Huron being PIN 41121-0001 (hereinafter referred to as the "Property");

AND WHEREAS the Town represents that it is the owner of lands legally described as follows:

a. Wellington ST PL 457 Town of Goderich BTN St. George’s CR and WEST Street, being PIN 41125-0056 (hereinafter referred to as the “Lands”)

AND WHEREAS the Owners intend to construct a fence on the east side of their Property, which will extend more or less 13’ onto the Lands as shown on the Site Survey prepared by the Owners, a copy of which is attached as Schedule "B”;

AND WHEREAS the Town has agreed to permit the Owners erect the fence on the Lands and thereby encroach onto Town-owned property, and has authorized the execution of an Encroachment Agreement to set out the terms and conditions of such encroachment, a copy of which is attached as Schedule “A”;

AND WHEREAS the Town is agreeable to the terms of the Encroachment Agreement and Schedule attached hereto;

NOW THEREFORE, THE COUNCIL OF THE CORPORATION OF THE TOWN OF GODERICH ENACTS AS FOLLOWS:

1. That the Mayor and Clerk be authorized to sign the Encroachment Agreement and any other necessary documentation to the Encroachment Agreement between Paul and Lynn Chisholm and the Corporation of the Town of Goderich.


________________________________________
MAYOR, John C. Grace

________________________________________
CLERK, Andrea Fisher
ENCROACHMENT AGREEMENT

THIS AGREEMENT made the 10th day of August, 2020.

BETWEEN:

THE CORPORATION OF THE TOWN OF GODERICH
(Hereinafter called the “Town”) of the First Part

- and -

PAUL DERRICK CHISHOLM AND ALBERTA LYNN CHISHOLM
(Hereinafter called the “Owners”) of the Second Part

WHEREAS:

A. The Owners represent that they are the owners of lands legally described as Plan 457 Office Reserve Lot 1, Town of Goderich, County of Huron being PIN 41121-0001 (LT) (hereinafter referred to as the “Property”);

B. The Town represents that it is the owner of lands legally described as follows:
   (i) Wellington ST PL 457 Town of Goderich BTN St. George’s CR & West St, being PIN 41125-0056 (LT) (hereinafter referred to as the “Lands”)

C. The Property and Lands are adjacent to one another, fronting West Street. A copy of the Land registry map is attached hereto as Schedule “B”.

D. The Owners wish to construct a fence on the east side of their Property to enclose their backyard. The Owners wish to erect the fence more or less 13’ (13 feet) to the east of their property line which will situate the fence on the Lands (the “Encroachment”). A site sketch prepared by the Owners is attached hereto as Schedule “A”.

E. The Town has agreed to permit the Owners to erect the fence which will encroach on the Lands, and has also authorized the execution of this Encroachment Agreement;

F. The Town is entitled to enforce the provisions of this Agreement against the Owners.

NOW THEREFORE THE PARTIES HERETO AGREE AS FOLLOWS:

1. The Town hereby grants permission to the Owners, at the sole risk and expense of the Owners, to use that portion of the Town's Lands for the construction of the Encroachment.

2. The Owners shall maintain, at the sole risk and expense of the Owners, the property located to the west of the Encroachment, being more or less 13’ of Lands in accordance with the Town’s Property Standard’s By-Law and any other relevant legislation or By-Law.

3. The Owners shall adhere to the position of the fence proposed in Schedule A hereto unless otherwise approved in writing by the Town.

4. The Owners shall at all times indemnify and save the Town harmless from any and all claims, loss, expense, damage, demands, actions, judgments or liability howsoever incurred by the Town arising from the exercise of the privileges herein granted to the Owners or incurred, sustained or paid by the Town in consequence of the encroachment permitted by this Agreement over the Town's Lands, and the Owners waive, as against the Town, all claims of whatever nature, where such loss, damage,
expense, liability or claim, arises directly or indirectly out of or is attributable to the encroachment or the exercise by the Owners or others of the privileges herein granted.

5. The Owners grant to the Town full power and authority to settle any actions, suits, claims and demands on such terms as the Town may deem advisable and hereby covenants and agrees with the Town to pay the Town on demand all moneys paid by the Town in pursuit of such settlement and also such sum as shall represent the reasonable costs of the Town or its solicitor(s) in defending or settling any such actions, suits, claims or demands and this Agreement shall not be alleged as a defence by the Owners in any action by any person of actual damage suffered by reason of the permission as aforesaid over the encroached Town's Lands.

6. The Owners shall obtain and maintain in force during the currency of this agreement, insurance providing coverage for public liability and property damage in the minimum of Two Million Dollars ($2,000,000). The Town shall be named as an additional insured and the policy shall contain a cross-liability clause, to the satisfaction of the Town. The Owners agree to forward to the Town the original or a certified copy of the policy of such insurance and the annual renewals thereof. It is acknowledged and agreed by the Owners that the provision of such insurance shall in no way relieve or limit the obligations of the Owners pursuant to this Agreement.

7. All expenses related to the preparation, signing and registration of this Agreement shall be paid by the Owners.

8. This Agreement shall be registered on title at the Owners expense within 60 days after signing the Agreement.

9. This Agreement shall run with the property and everything herein contained shall ensure to the benefit of and be binding upon the parties hereto and their successors and assigns.

10. The Town shall be entitled to terminate this Agreement:

   A. Forthwith, upon failure of the Owners to operate in accordance with all applicable laws and in accordance with the terms of this Agreement, provided the Owners have not, within thirty (30) days or receiving notification from the Town, rectified any such non-compliance; or

   B. In the event the Town requires all or any portion of the Town's Lands that are subject to the encroachment rights granted under this Agreement for Town purpose(s) and it is not reasonably practical for the Owners to continue using the Town's Lands concurrently with said Town purpose(s). The Town is not entitled to terminate this Agreement if said Town purpose(s) is temporary and the Town's Lands may be restored for continued use by the Owners after the Town's Lands that are subject to the encroachment rights granted under this Agreement or no longer required by the Town.

11. The Owners acknowledge and agree that should the Town terminate this Agreement in accordance with paragraph 10 hereof, the Owners shall forthwith remove or relocate the encroachment, including reinstatement to the satisfaction of the Town and at the sole expense of the Owners.

12. If any notice is required to be given by the Town to the Owners in respect to this Agreement, such notice shall be sent by registered mail, registered courier or delivered personally by a Town employee or its agent to:

   ATTN: Paul and Lynn Chisholm
   146 West Street.
   Goderich, ON N7A 2K9
   phone: 519-524-

   or to such other addresses of which the Owners have notified the Town in writing, and any such notice mailed, sent or delivered shall be deemed good and sufficient notice under the
terms of this Agreement.

12. Nothing in this Agreement constitutes a waiver of the obligation of the Owners to comply with the Zoning By-law of the Town, Ontario Building Code or any other By-law of the Town, or any restrictions or regulations lawfully imposed by any other authorities having jurisdiction in connection therewith.

13. This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario.

14. This Agreement shall be read with such changes of gender and number as the context requires.

15. Any provision of this Agreement which is prohibited or unenforceable shall be ineffective to the extent of such prohibition or unenforceability and shall be severed from the balance of this Agreement, all without affecting the remaining provisions of this Agreement.

IN WITNESS WHEREOF Paul Chisholm and Lynn Chisholm have executed this Agreement on the 10th day of August, 2020.

__________________________________________  ________________________________
Witness                                           Paul Derrick Chisholm

__________________________________________  ________________________________
Witness                                           Alberta Lynn Chisholm

IN WITNESS WHEREOF the Corporation of the Town of Goderich has executed this agreement the 10th day of August, 2020.

THE CORPORATION OF THE TOWN OF GODERICH

Per:____________________________________
    Mayor, John C. Grace

Per:____________________________________
    Clerk, Andrea Fisher

We have the authority to bind the Corporation.
Schedule “B”

Land Registry Office Map