



## **ENCROACHMENT AGREEMENT**

THIS AGREEMENT MADE as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

BETWEEN:

**CHAD HARNDEN  
AND  
LYNNE HARNDEN**  
BOTH OF:  
674 MUIRFIELD CRESCENT  
LYALTA  
ALBERTA T0J 1Y1  
(hereinafter collectively called the "**Owner**")

OF THE FIRST PART

- and -

**WHEATLAND COUNTY**  
Of  
Highway #1, R.R. 1,  
Strathmore, Alberta T1P 1J6  
(hereinafter called "**the County**")

OF THE SECOND PART

WHEREAS the Owner is the registered owner of the lands legally described on certificate of title # 181 155 548 (the Title) as:

CONDOMINIUM PLAN 0710284

UNIT 179

AND 54 UNDIVIDED ONE TEN THOUSANDTH SHARES IN THE COMMON PROPERTY  
EXCEPTING THEREOUT ALL MINES AND MINER

(hereinafter referred to as the "Lands")

AND WHEREAS the Owner owns A HOUSE EAVE, A RETAINING WALL AND A WOODEN FENCE located on the Lands and has requested to encroach onto a UTILITY RIGHT OF WAY under the direction, control and management of Wheatland County, registered as Plan 0710288 (the UROW), and caveated on the Title as registration #0171026550, (the "Encroachment");

AND WHEREAS the Owner has requested that the Encroachment be allowed;

AND WHEREAS the County agrees to grant the Owner's request subject to the provisions of all applicable municipal bylaws as amended from time to time and subject to the terms and conditions of this Agreement;

NOW THEREFORE this Agreement witnesses that in consideration of the premises, the covenants herein contained and other good and valuable consideration, the Owner and hereby agree as follows:

1. The County grants to the Owner permission to encroach upon or over that portion of the UTILITY RIGHT OF WAY in the municipality which is shown on the sketch attached as Schedule "A" hereto (the "Encroachment Area") for purpose of A HOUSE EAVE, A RETAINING WALL AND A WOODEN FENCE (the "Works") as described herein, and shown on Schedule "B" if applicable.
2. In consideration of this right to maintain the Works on the Encroachment Area pursuant to this Agreement, the Owner shall pay to The County the sum of One (\$1.00) Dollar, the receipt of which is hereby acknowledged by Wheatland.
3. It is to be noted that at the time of signing, the wooden Fence is yet to be constructed, and the Owner shall ensure all necessary first calls, locates and exposing of lines within the UROW is done to ensure any post holes or construction activity does not damage or threaten the integrity of the line(s) in the UROW.
4. It is acknowledged and accepted the retaining wall is an existing structure at the time of signing. The County hereby permits it to remain, however the County reserves the right, to demand its removal with thirty (30) days written notice, to access rights of way subject of this encroachment agreement, at no cost to the County, its employees, or contractors, and it shall not be replaced nor be permitted to be replaced in the right of way in this instance.
5. The Owner shall at all times and at his own expense keep and maintain the Works in good and sufficient repair to the reasonable satisfaction of Wheatland, and no structural alterations shall be made to the Works except in accordance with a the appropriate Permits and with the prior written consent of the County.
6. No provision of this Agreement and no act or omission or finding of negligence, whether joint or several, as against the County, in favor of any third party, shall relieve the Owner from liability to the County, whether such liability arises under this Agreement or otherwise.
7. If the Owner violates any provision of this Agreement, or any provision of Wheatland County's bylaws relating to the Works, all rights accruing to the Owner under this Agreement shall, unless The County otherwise decides, cease upon thirty (30) days written notice if not remedied within that period, but The County 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 permission to encroach granted herein.

8. (a) The Owner indemnifies, saves harmless, releases and forever discharges The County from and against any and all manner of actions, causes of actions, claims, debts, suits, loss, costs, demands and promises whatsoever, whether known or unknown, which the Owner or any other person now has or may at any time have by reason of:
  - (i) the permission to encroach granted herein; or
  - (ii) the construction, maintenance, existence, use or removal of the Works including, without restricting the generality of the foregoing, any claim for loss or injury to persons or property due to the negligence of the Owner, or any of its servants, agents, employees, contractors, sub-contractors or representatives;
  - (iii) failure to comply with the County's bylaws relating to the Works or with any provision of this Agreement, or;
  - (iv) any action or claim in the nature of Occupier's Liability;
- (b) The Owner shall ensure to have general liability insurance in an amount not less than \$5,000,000 with Wheatland County as a named insured and provide The County with evidence of such insurance providing coverage satisfactory to The County with regard to the indemnification given in this clause.
9. Due to the nature of the improvements on the Lands, the County's officers, employees, agents and contractors shall not have the right to enter without notice upon the Lands and the Encroachment Area for the purpose of reconstruction, maintaining, repairing, inspecting, testing or removing any public works, utility or road existing at the date of this Agreement, or in the future, in the vicinity of the Works. The County shall provide a minimum 48 hours' notice of any such entry being required, and the County shall in undertaking such activities use reasonable efforts to cause its officers, employees, agents and contractors to minimize any disruption or damage to the Works.
10. All costs to repair or replace the Works which occur as a result of Wheatland's activities pursuant to Section 8 of this Agreement shall be borne entirely by the Owner. In addition, the Owner shall reimburse The County for all necessary and reasonable costs incurred by The County as part of Wheatland's activities pursuant to Section 8 of this Agreement in excess of those costs that would have been incurred if the Works did not exist.
11. The Owner may at any time in its sole discretion provide written notice of its intent to vacate the Encroachment. The Owner shall remove the Works and restore the

Encroachment area to the satisfaction of the Chief Administrative Officer of Wheatland by the end of the notice period.

12. In the event the Owner fails to remove the Works or to restore the Encroachment Area to the satisfaction of the Chief Administrative Officer of Wheatland by the end of the notice period, The County may cause such removal to be made or completed, including restoration of the Encroachment Area, and the cost thereof shall be borne by the Owner.
13. If any section, subsection, sentence, clause or phrase of this Agreement is for any reason held to be invalid by the decision of 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.
14. This Agreement shall enure to the benefit of and be binding upon the parties hereto, and their successors, NOTWITHSTANDING any rule of law or equity to the contrary; and this Agreement shall be governed and construed in accordance with the laws of the Province of Alberta.
15. Any notice, demand, request, consent or other instrument required or permitted to be given under this Lease shall be in writing and shall be given and deemed to have been received as provided in this Section 9.5, and shall be addressed:
  - a. to The County as follows: as shown on page 1
  - b. to the Owner as follows: as shown on page 1or such other address as either party may direct for all future Notices by giving Notice in writing. Any Notice must be mailed in Canada by ordinary mail, delivered personally, or sent by prepaid registered mail or courier.
16. The parties hereto acknowledge and agree that this Agreement shall be registered as a caveat on title to the Lands, and that only The County may discharge same once registered.
17. The preamble to this Agreement is incorporated into and as part of this Agreement

IN WITNESS WHEREOF, the parties hereto have hereunder executed these presents as of the day, month, and year first above written.

**THE OWNER**

\_\_\_\_\_  
Witness

Per:\_\_\_\_\_

c/s

\_\_\_\_\_  
Witness

Per:\_\_\_\_\_

**WHEATLAND COUNTY**

Per:\_\_\_\_\_  
Reeve

c/s

Per:\_\_\_\_\_  
CAO

WITNESS AFFIDAVIT

I, \_\_\_\_\_, of \_\_\_\_\_, in the  
Province of Alberta make oath and say:

1. I was personally present and did see \_\_\_\_\_  
who is/are known to me to be the person named in the within (or annexed) instrument,  
duly sign the instrument;

or

I was personally present and did see \_\_\_\_\_  
who, on the basis of the identification provided to me, I believe to be the person(s) named  
in the within (or annexed) instrument, duly sign the instrument;

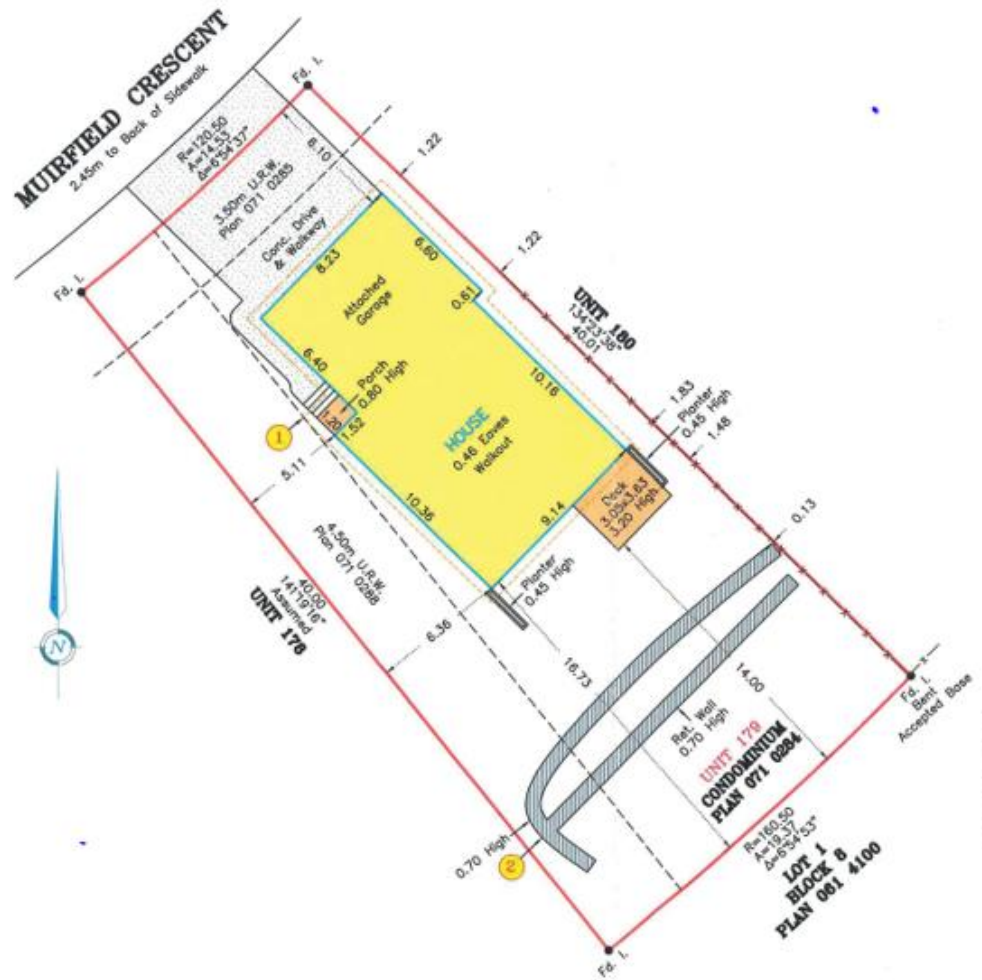
2. The instrument was signed at \_\_\_\_\_ in the Province of  
Alberta and I am the subscribing witness thereto;
3. I believe the person whose signature I witnessed is at least eighteen (18) years of age.

SWORN before me at \_\_\_\_\_ )  
in the Province of Alberta this \_\_\_\_\_ day ) \_\_\_\_\_  
of \_\_\_\_\_, 20\_\_\_\_ ) Signature

\_\_\_\_\_  
Commissioner for Oaths in and for  
Alberta

## SCHEDULE "A"

## The Encroachment Area



**SCHEDULE "B"**  
**The "Works"**



# **ENCROACHMENT AGREEMENT**

PURSUANT TO SECTION 651.2  
MUNICIPAL GOVERNMENT ACT  
OF ALBERTA

BETWEEN

**CHAD HARNDEN  
AND  
LYNNE HARNDEN**

**CONDOMINIUM PLAN 0710284  
UNIT 179**

- and -

**WHEATLAND COUNTY**

DATED: \_\_\_\_\_, 20\_\_\_\_