

THE CORPORATION OF THE CITY OF DRYDEN

BY-LAW NUMBER 2022-15

BEING A BY-LAW TO AUTHORIZE THE EXECUTION ON AN ENCROACHMENT AGREEMENT BETWEEN THE CORPORATION OF THE CITY OF DRYDEN AND 270396 ONTARIO INC.

WHEREAS a building on land municipally known as 20 King Street in the City of Dryden owned by 270396 Ontario Inc. encroaches onto the sidewalk allowance of King Street on the North side of said property.

AND WHEREAS the City of Dryden is willing to permit the encroachment upon the terms and conditions contained within the agreement attached hereto.

NOW THEREFORE the Council of The Corporation of The City of Dryden hereby enacts as follows:

1. That the Mayor and Clerk are hereby authorized to execute an Encroachment Agreement dated March 28, 2022, between The Corporation of The City of Dryden and 270396 Ontario Inc. in the form attached hereto as "Schedule A" forming part of this By-Law.
2. This By-law shall come into force and take effect upon the final passing thereof.

ENACTED AND PASSED THIS 28th DAY OF MARCH 2022 as witnessed by the Corporate Seal of The Corporation of The City of Dryden and the hands of its proper Officers duly authorized in that behalf.

THE CORPORATION OF THE CITY OF DRYDEN

MAYOR

CLERK

SCHEDULE A TO BY-LAW #2022-15

THIS AGREEMENT made this 28th day of March 2022

B E T W E E N:

270396 Ontario Inc.

The Party of the First

Part - a n d -

THE CORPORATION OF THE CITY OF DRYDEN
(Hereinafter referred to as the "City")

The Party of the Second Part

WHEREAS 270396 Ontario Inc. is the registered owner of the land and property municipally known as 20 King Street, more particularly described as PLAN M225 LOT 1 PT LOT 2 S KING ST AND 23R4171 PART 1 PCL 16233 AND 31090 DKF, in the City of Dryden.

AND WHEREAS the building location is identified in attached Appendix "A", and the site plan is shown in attached Appendix "B".

AND WHEREAS the said as-built site plan indicates that the accessibility ramp and entrance to the building encroaches approximately 0.77 metres x 5.7 metres on the north side onto the sidewalk which is owned by the city.

AND WHEREAS the City is prepared to permit the encroachment on the terms and conditions contained herein.

NOW THEREFORE in consideration of the sum of TWO HUNDRED AND SIXTYFOUR DOLLARS (\$264.00) receipt of which is hereby acknowledged, and the mutual covenants contained herein, the Parties hereto agree the one with the other as follows:

1. 270396 Ontario Inc. hereby acknowledges that the accessibility ramp and entrance for the two-storey building encroaches approximately 0.77 metres x 5.7 metres on the

north side over the lot line and encroaches onto the sidewalk as shown on the survey attached hereto as Appendix "B" and forming part of this agreement.

2. The City hereby permits the encroachment of the accessibility ramp and entrance as shown on Appendix "B" onto the King Street sidewalk which is under the jurisdiction and control of the City, upon the following terms and conditions:
 - a. 270396 Ontario Inc. agrees to maintain the encroaching portion of the accessibility ramp and entrance in a safe and good state of repair at their sole expense and cost. Without limiting the generality of the foregoing, the city may at any time give written notice to the Owner requiring that certain maintenance or repair work be carried out with respect to the Encroachment. Forthwith upon receipt of such notice, the Owner shall commence all work described therein and shall have such work completed to the satisfaction of the City within the time period stipulated in the said notice.
 - b. If the Owner fails to maintain the Encroachment in a good state of repair and if, on the request of the City, the Owner neglects, refuses or fails to repair or maintain the same within a reasonable time, then the City may cause the required work to be done and may charge the costs thereof to the Owner, and the City may recover such costs from the Owner in like manner as taxes that are due and payable.
 - c. 270396 Ontario Inc. shall not do or cause anything to be done, any alteration or improvements by way of enlargement, to the said encroachment which would increase the encroachment onto the City owned property, without the prior written consent of the City.
 - d. Its', theirs, successors, and assigns, or whomever shall come to have an interest in the subject property, shall forever and always save harmless the Party of the Second Part from any and all claims or actions for liability and/or damages which may be occasioned by the existence of the encroachment referred to herein.
 - e. The Party of the Second Part hereto reserves the right to require the Party of the First Part to remove the encroachment referred to herein if the situation(s) set out in paragraph (e) below occurs. Said removal to be commenced within a reasonable period of time following the giving of thirty (30) days written Notice by the Party of the Second Part to the Party of the First Part, their heirs or successors as the case may be, by registered mail to the address of the subject property. Removal of the

encroachment is to be undertaken at no cost to the Party of the Second Part. If the Owner neglects, refuses or fails to do so within the term specified in the notice, then the City may remove all installations and restore the Encroachment Area to a safe and proper condition, and may charge the costs thereof to the Owner, and the City may recover such costs from the Owner in like manner as taxes that are due and payable.

- f. Where a notice is not complied with within thirty (30) days after its receipt, the City may in writing authorize any person to enter upon the land involved to do whatever is necessary to comply with the notice, and all costs resulting from this action shall be borne by the Owner.
- g. If reconstruction of the structure creating the encroachment is required as a result of the structure having been destroyed by fire, demolition or otherwise, said reconstruction is to be enacted in such a manner as to ensure that the encroachment is removed.
- h. The Owner hereby remises, releases and forever discharges the City, its elected officials, employees, agents and contractors, of and from any and all claims, actions, causes of action and other proceedings and any liability for damages, costs and expenses for or relating to any loss which the Owner may suffer arising out of or occasioned by the presence upon the City Lands of the Encroachments, the condition or state of repair of the Encroachments, the condition or state of repair of the City Lands, or the requirement to remove the Encroachments, and the Owner covenants not to bring any such claim, demand, action or other proceeding against any other person or persons who might claim contribution or indemnity therefor over against the City, its elected officials, employees, agents and contractors.
- i. The Party of the Second Part shall fully indemnify and protect the City from liability from the use of the said leasehold property and shall provide proof of such insurance to the City.
- j. Nothing herein contained shall be construed as giving the Owner anything more than permission for the Encroachments and such permission does not give to the Owner any easement, title, right or interest in the City Lands.
- k. 270396 Ontario Inc. covenants to carry public liability insurance in the minimum amount of Two Million Dollars (\$2,000,000.00), in the name of both the City and 270396 Ontario Inc., and pay premiums for this insurance and to deposit certificates with respect to this insurance with the City, all insurance to be carried

in a company or companies satisfactory to the City, and be of a type and form satisfactory to the City, and shall include an endorsement requiring thirty (30) days' notice to the Landlord prior to cancellation; and provided that if the Tenant fails to insure and keep insured as provided in this paragraph, the City may effect insurance, at a cost and expense of 270396 Ontario Inc., and the sum so expended by the City shall be added to the rent due, and such an amount constitute rent under this lease.

- I. Should any of the terms of this Agreement be found to be illegal, unenforceable, or *ultra vires* by a court of competent jurisdiction, then those terms so found shall be severable from this Agreement and the remaining terms herein shall continue in full force and effect.
3. The Parties hereto acknowledge and agree that this agreement shall be registered on title to the property above set out and shall serve as perpetual notice to successors in title.
4. 270396 Ontario Inc. hereby agrees to pay all legal costs and disbursements relating to the negotiation, preparation and registration of this agreement and the required \$264.00 application fee payable to the City of Dryden.

IN WITNESS WHEREOF the parties to this Agreement have hereunto set their hands and seals this 28th day of March A.D. 2022.

SIGNED, SEALED AND DELIVERED

In the presence of

For the Corporation of The City of Dryden:

Mayor (seal)

Clerk

For 270396 Ontario Inc.

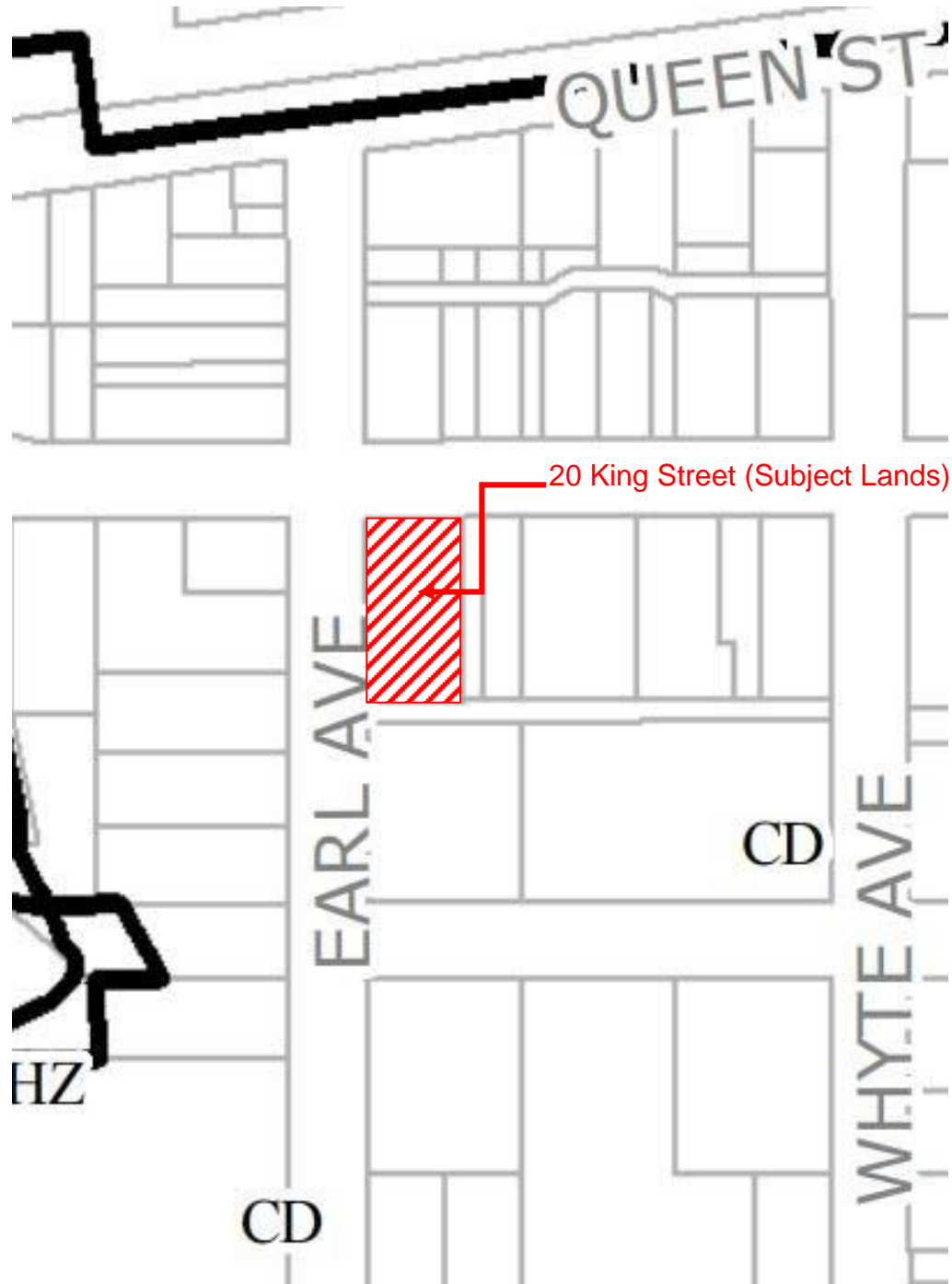
(Name)

20 King Street Property Location

Legal Description:

PLAN M225 LOT 1 PT LOT 2 S KING ST AND 23R4171 PART 1 PCL 16233 AND 31090 DKF,
in the City of Dryden.

Key Map:



APPENDIX "B"

20 King Street Accessibility Ramp and Entrance Site Plan

Legal Description:

PLAN M225 LOT 1 PT LOT 2 S KING ST AND 23R4171 PART 1 PCL 16233 AND 31090 DKF,
in the City of Dryden.

Site Plan:

