

THIS ENCROACHMENT AGREEMENT made this [Note to Draft: City will insert date]
5 day of February, 2021



Hamilton

Building Division

Reviewed for Ontario Building Code Compliance.

Subject to Corrections Noted on Plans and Field Inspections.

Permit: 21 124654 000 00 R9

Date: 06/17/21

Name: Mike Allen

Approved by: [Signature]

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BETWEEN:

CITY OF HAMILTON

("City")

- and -

[NAME OF OWNER]

MAGAPU, RISHI PARASHAR & MACKENZIE, RACHEL KATHLEEN

("Owner")

WHEREAS:

The Owner is the registered owner of the property known municipally as

[MUNICIPAL ADDRESS]

294 Bold Street, Hamilton, ON

in the City of Hamilton further described in Schedule "A" attached ("Owner's Property");

The City is the registered owner of a road allowance or other property abutting the Owner's Property, being

[NOTE TO DRAFT: INSERT PIN # AND MUNICIPAL ADDRESS OR STREET NAME OF CITY PROPERTY.]

Municipal Address/Street Name: Bold Street, Hamilton

PIN #: 17140-0014 (LT)

("City's Property");

The Owner wishes to establish and/or maintain an Encroachment in, on or above the City's Property, in the manner and to the extent described in Schedule "B" attached ("Encroachment");

Sections 8, 9 and 10 of the *Municipal Act, 2001*, S.O. 2001, c. 25 authorize the City to act necessary or desirable for municipal purposes, and in particular paragraphs 4, 6 and 7 of subsection 10(2) authorize the municipality to act with respect to: public assets of the municipality acquired for the purpose of exercising its authority under the *Municipal Act, 2001*, S.O. 2001., c. 25 or any other Act; the health, safety and well-being of persons; and the provision of any service or thing that it considers necessary or desirable for the public.

The *Municipal Act, 2001*, S.O. 2001, c. 25 further authorizes the City, amongst other things, to delegate its authority and to impose fees or charges on persons for services or activities provided or done by or on behalf of it;

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The Council of the City ("Council") has authorized agreements to permit certain Encroachments in, on or above City road allowances or other City property in accordance with Encroachments on City Property – Policy and Procedure (PW11024) – (City Wide) adopted by Council on April 4, 2011; and

The City has agreed to permit the Encroachment subject to the terms and conditions set out below.

NOW THEREFORE the City and the Owner agree as follows:

1.0 Definitions:

- 1.1 "City Authority" means the Public Works, Engineering Services Division or such other City department, division, section, official or person(s) designated from time to time by Council.
- 1.2 "Encroachment" means an improvement, such as a building, structure, planted area or Outdoor Boulevard Café, made to City Property that is located entirely or partly in, on, under or above the City's Property.
- 1.3 "Outdoor Boulevard Café" means an outdoor café/patio that is situated either partly or wholly within City Property.

2.0 Establishing and Maintaining the Encroachment:

2.1 The Owner may establish and maintain the Encroachment in, on, under or above the City's Property in the manner and to the extent described in Schedule "B" attached.

2.2 The design, construction, and location of the Encroachment shall be authorized by the City Authority in advance and the Encroachment shall be erected and maintained in all respects by the Owner to the satisfaction of the City Authority. The fact that the City Authority shall have authorized the design, location and construction of the Encroachment shall in no way affect, discharge or modify any liability; any requirement or obligation of the Owner under this Agreement.

2.3 Except as required for Outdoor Boulevard Cafes that require a Building Permit as set out in 3.1 below, the Owner shall on being requested by the City, provide to the City Authority copies of an "as constructed" plan and profile drawings which locate the Encroachment with respect to the Owner's Property and the City's Property including exact measurements and offsets to property lines and existing property bars.

2.4 The Owner shall ensure that the Encroachment does not interfere with the free and safe passage of persons using the road allowance.

2.5 The Owner shall at all times maintain the Encroachment in a good and safe condition.

2.6 The Owner and any successors, heirs and assigns shall notify the City Authority of any changes in ownership of the Owner's Property.

3.0 Outdoor Boulevard Café Encroachments:

3.1 If a Building Permit is required the Owner shall apply for and obtain a minor site plan application, which will include a patio layout plan, to the satisfaction of the General Manager, Planning and Economic Development or their designate, which shall illustrate seating layout, capacities, conformity with the Zoning By-law and other relevant design requirements of the City, prior to acceptance of an Encroachment Agreement application. The Owner may be asked to alter the patio layout plan at the discretion of the General Manager, Planning and Economic Development or the General Manager, Public Works or their designate(s).

3.2 Live or amplified music is not permitted to be located within the Encroachment, the operation of which shall conform with the City of Hamilton Noise By-law No. 03-020, as

amended from time to time.

3.3 No part of the Encroachment may be used by the Owner for any purpose or use, at any time, other than for that of an Outdoor Boulevard Café.

3.4 The Owner shall ensure that only food and non-alcoholic beverages prepared and served from the abutting eating establishment is permitted on the Encroachment unless it is in compliance with Sections 3.11 and 3.12 below. No outdoor food preparation such as barbeques shall be permitted within the Encroachment.

3.5 The Owner shall ensure that facilities of the abutting restaurant to the Encroachment provides food preparation, garbage storage, and washrooms satisfactory to the Alcohol and Gaming Commission of Ontario and any applicable City departments including Public Health Services, Business Licensing, and Zoning.

3.6 Capacity for the Encroachment has been calculated based on Gross Floor Area ("GFA") rate of 1.1 square meters per person. The approved capacity for this Outdoor Boulevard Café is n/a persons.

3.7 The Encroachment shall be used and designed for seating.

3.8 Any Encroachments such as decks, planters, canopies, etc. which are not included in the approved "as constructed" plan and/or profile drawings and/or patio layout plan for the Outdoor Boulevard Café Encroachment shall require the Owner to submit a separate application and obtain an Encroachment Agreement for the additional Encroachments and to pay any fees associated with the additional Encroachments.

3.9 In no case whatsoever shall compensation be payable to the Owner for improvements (if any) to the road allowance.

3.10 For the purpose of winter control operations, where required, the Owner shall remove any and all installations and appurtenances related to the operation of the Outdoor Boulevard Cafe from the road allowance during the period of November 1st to April 30th inclusive of each year and shall restore the road allowance to the satisfaction of the General Manager, Public Works.

Where alcohol is to be served on the Owner's Property, the following shall apply:

3.11 Where the Owner intends to serve alcohol on the property, to provide a copy of their



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Alcohol and Gaming Commission ("AGCO") Liquor application and/or ex
Licence.



3.12 The Owner shall ensure that, the hours of operation and the hours during which alcohol service is permitted, if applicable, at either the Owner's Property and on the Encroachment complies with any established for the Owner's Property and the Encroachment by the City under any by-law, resolution or agreement and/or as may be established by the AGCO in any liquor license(s) associated with the Owner's Property or the Encroachment.

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4.0 Fees:

4.1 The Owner shall pay the following fees to the City during the term of this Agreement:

4.1.1 an application fee of \$ plus H.S.T. shall be payable by the Owner at the time of filing an Encroachment Agreement Application. The application/initial fee shall be payable by cheque or bank draft to "City of Hamilton" clearly marked with the address of the Owner's Property, municipal tax roll number and the purpose of the cheque or bank draft;

4.1.2 an annual fee of \$ plus H.S.T. for the first year of the Encroachment Agreement, which fee has not been prorated. This first annual fee will be paid by the Owner at the time that the Encroachment Agreement is approved and signed copies are submitted by the Owner to the City for its execution; and

4.1.3 an annual fee of \$ plus H.S.T. for subsequent years shall become payable on January 1st in each subsequent year and shall be added to the property tax roll as set out in article 4.2 below. The annual fee shall be subject to change from time to time as determined by the City's User Fees and Charges by-law and any notice that may be required for the passage of such by-law shall be sufficient for the purposes of this section.

4.2 The Owner authorizes the Treasurer to add annual fees on a yearly basis to the tax roll for the Owner's Property as provided for in article 4.1.3 and the Treasurer shall collect them in the same manner as municipal taxes.

4.3 Owners whose properties are tax exempt shall pay their annual fees by cheque or bank draft payable to "City of Hamilton" clearly marked with the address of the Owner's Property, municipal tax roll number and the purpose of the cheque or bank draft.


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- 4.4 The fees under article 4.1.1, 4.1.2 and 4.3 shall be delivered personally to:
City of Hamilton
Public Works Department – Engineering Services Division
Suite 320, City Centre, 77 James Street North
Hamilton, ON L8R 2K3

or by mail in accordance with section 9.3 below.

- 4.5 In addition to paying the fees set out in 4.1 above, the Owner agrees to pay the City upon demand any additional expenses incurred by the City as may be provided for in this Agreement and which fees and expenses shall become a debt of the Owner. The Treasurer shall add any unpaid fees and expenses payable by the Owner to the City under this Agreement to the tax roll for the Owner's property and shall collect them in the same manner as municipal taxes.

- 4.6 The Owner acknowledges that it is liable to pay all fees, expenses, taxes, charges, duties, rates or levies, if any, assessed in respect of the Encroachment as, when and if any of these become due and payable.

5.0 Registration of Agreement:

- 5.1 The Owner consents to the registration of this Agreement against title to the Owner's Property by the Owner's solicitor and at the Owner's expense. In so doing, the Owner shall direct its Solicitor to provide a copy of the registered document to the City immediately following its registration.

6.0 Indemnity and Insurance:

- 6.1 The Owner agrees to defend, indemnify and save harmless the City from and against all actions, causes of action, interest, claims, demands, costs, damages, expenses, or loss howsoever arising which the City or the Owner may bear, suffer or be put to by reason of any damage to property or injury or death to any person as a result of the Encroachment.

6.2

6.2.1 Commercial

Throughout the term of the Agreement (including where applicable, any renewal thereof), the Owner shall obtain and maintain at its own expense, including the cost of any applicable deductible, a Commercial General Liability insurance policy for third party bodily injury and property damage arising out of the granting

of the privilege set out in this Agreement to a limit of not less than One Million Dollars (\$5,000,000.00) per occurrence or such other amount that may be required by the City from time to time. This policy shall include a cross-liability and waiver of subrogation clause in respect of each named insured and shall be endorsed to include the City of Hamilton as additional insured. The policy shall provide that at least 30 days prior written notice (10 days in the event of non-payment of premiums) shall be given to the City by the Insurer before the Insurer or Owner takes any steps to cancel, terminate, fail to renew, amend or otherwise change or modify the insurance or any part thereof.

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6.2.2 Residential

Throughout the term of the Agreement (including where applicable, any renewal thereof), the Owner shall obtain and maintain at its own expense, including the cost of any applicable deductible, Third Party Liability Insurance for bodily injury and property damage arising out of the granting of the privilege set out in this Agreement to a limit of not less than One Million Dollars (\$1,000,000.00) per occurrence. At the time of the execution of this Agreement, and thereafter during the term of the Agreement, no later than 20 Business Days after the renewal date of the policy, the Owner shall delivery to the City evidence of such insurance by way of a copy of the Personal Lines policy declarations page or a Certificate of Insurance showing thereon relevant coverage and referencing the Owner's property. At the City's election, the Owner shall provide a certified copy of the insurance policy required herein. Certificate Holder will be addressed as the City of Hamilton, City Centre, 71 Main Street West, Hamilton, Ontario, Canada, L8P 4Y5. All evidence of insurance shall be mailed to this address to the attention of Road Programming Technician, Geomatics and Corridor Management, Engineering Services, Public Works.

6.3 At the time of the execution of this Agreement, and thereafter during the term of the Agreement, no later than 20 Business Days prior to the renewal date of the policy the Owner shall deliver to the City an original Certificate of Insurance originally signed by an authorized insurance representative and confirming thereon relevant coverage information including but not limited to a reference to the Encroachment Agreement including the address of the applicable location and showing the City of Hamilton as additional insured. At the City's election, the Owner shall provide a certified copy of insurance policy required herein.

6.4 Certificate Holder will be addressed as the City of Hamilton, 71 Main Street West, Hamilton, Ontario Canada L8P 4Y5. All certificates, cancellation, non-renewal or adverse change notices shall be mailed to this address to the attention of Public Works, Engineering Services Division.




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7.0 Alteration, Repair or Removal of Encroachment:

7.1 If with respect to the Encroachment:

7.1.1 any act or thing is contrary to a requirement of the City Authority;

7.1.2 any act or thing is done of which the City Authority disapproves;

7.1.3 in the opinion of the City Authority, the Owner has failed to maintain the Encroachment in a safe condition,

then the City Authority may verbally or in writing require the Owner to alter or repair the Encroachment or to remove the Encroachment and restore the City's Property to a condition acceptable to the City Authority. If the Encroachment is not altered or repaired within forty-eight hours or if the Encroachment is not removed and the City's Property restored within thirty (30) days after such requirement then the City Authority may cause the alteration or repair or the removal and restoration to be done either by its own employees or by some other person at the expense of the Owner.

7.2


7.2.1 This Agreement is subject to all rights now or that may hereafter be vested in the City or in any gas, water, telephone, electric, light or other company, in respect of the care and improvement of the City's Property or the construction, repair replacement or removal of sewers, culverts, drains, water or gas pipes or the placing of poles or wires (the "services") therein. The City expressly reserves to itself the right to construct services or permit services to be constructed.

7.2.2 The City expressly reserves to itself the right to temporarily or permanently remove an encroachment (or a portion of an encroachment) and suspend all rights extended to the Owner under this Agreement where urgent, exceptional or emergency circumstance arises requiring a response by the City.

Where such circumstances arise, the City may take whatever steps it determines to be necessary, including removing an encroachment or a portion of an

encroachment; preventing an encroachment from being used; or taking steps that would prohibit or hinder an encroachment from being used in its usual manner. The City shall not be responsible for any damages arising from its exercise of this reserved privilege and may exercise this privilege without notice to the Owner. Where possible, the City will provide notice to the Owner, however such notice may be less than that otherwise provided for by this Agreement.

7.2.3 The Owner shall not be entitled to any compensation of any type by reason of the exercise of the rights contained in this section and the Owner shall, at its own expense, carry out such alteration or repair of the Encroachment or removal of the Encroachment and restoration of the City's Property as the City Authority may require.

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8.0 Termination:

8.1 This Agreement may be terminated at any time:

8.1.1 by the City for any reason after the delivery to the Owner of written notice of the City's intention to terminate at least thirty (30) days prior to such termination. Within thirty (30) days of the delivery by the City of notice of its intention to terminate this Agreement, the Owner shall remove the Encroachment, restore the City's Property to a condition acceptable to the City Authority and notify the City Authority in writing when this has occurred;

8.1.2 on the mutual consent of the City and the Owner by means of a written agreement. Within sixty (60) days of the execution of the written agreement, or such other time as may be mutually agreed upon, the Owner shall remove the Encroachment, restore the City's Property to a condition acceptable to the City Authority and shall notify the City Authority in writing when this has occurred;

8.1.3 the Owner ceasing to be the registered owner of the premises described as the Owner's Property herein;

8.1.4 the Owner fails to comply with any other provision in this Agreement;

8.1.5 in the case of Outdoor Boulevard Café Encroachments only, changes occur to the liquor licence issued by the AGCO; or

8.1.6 where urgent, emergency and exceptional situations occur and will include the ability of the City Authority to take action to remove and restore by its own forces when and where necessary.

8.2 On the happening of any of the following this Agreement will terminate immediately:

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8.2.1 changes are made to either the Owner's Property such that it impacts on the Encroachment or changes are made to the Encroachment that deviate from the approved plan submitted for this Agreement;

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8.2.2 in the case of Outdoor Boulevard Café Encroachments only, changes are made to the Business Licence in effect at the time that this Agreement was entered into that impact on the Encroachment;

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8.2.3 in the case of Outdoor Boulevard Café Encroachments only, the Owner ceasing to be the registered owner of the premises described as the Owner's Property herein.

If the Encroachment is not removed and the City's Property restored in accordance with clause 8.1.1 or 8.1.2 then the City Authority may cause the removal and restoration to be done either by its own employees or by some other person at the expense of the Owner.

8.3 On Termination of an Agreement, the City or the Owner, at the City's direction shall register a discharge of this Agreement on title to the Owner's Property. Registration of the discharge shall in no way affect any requirement or obligation of the Owner under this Agreement up to the time of the termination. The Owner shall bear the cost of this discharge.

9.0 General Provisions:

9.1 The Owner shall observe and comply with all applicable Federal and Provincial statutes and regulations and with all by-laws, policies and guidelines of the City and all requirements of the City given through the City Authority respecting the Encroachment.

9.2 Schedules "A" and "B" attached to this Agreement form part of it. Unless otherwise indicated, any notice or other document to be given under this Agreement shall be given in writing and delivered personally, transmitted by facsimile or by prepaid registered mail addressed to:

City: **Attention:** City of Hamilton
Public Works,
Engineering Services Division,
Corridor Management Section
Suite 320,
City Centre, 77 James Street North
Hamilton, ON Canada L8R 2K3

Telephone: (905) 546-2489
Facsimile: (905) 540-5926

AND TO

Attention: City of Hamilton, City Clerk
71 Main Street West Hamilton,
ON Canada L8P 4Y5



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or such other address as may hereafter be assigned.

Owner: **Attention:** [NOTE TO DRAFT: INSERT LEGAL ADDRESS OF OWNER FOR SERVICE.]

MAGAPU, RISHI PARASHAR & MACKENZIE, RACHEL KATHLEEN
294 Bold Street
Hamilton, ON L8P1W4

Tel#: 201-772-6238

Fax #:

All notices delivered by facsimile shall be deemed received upon mechanical confirmation of transmittal. All notices mailed hereunder shall be deemed to have been given and received by the addressee seventy-two (72) hours following mailing. In the event of actual or threatened postal interruption, all notices shall be delivered personally or by facsimile.

- 9.3** This Agreement is to be read with all the changes made necessary by the gender, number or corporate status of the Owner. Where the Owner is comprised of more than, it is agreed that the Owner's obligations under this Agreement are joint and several.
- 9.4** The headings in this Agreement are inserted for convenience of reference only and do not form part of the Agreement.
- 9.5** If any term, clause or provision of this Agreement shall be judged to be invalid for any

reason whatsoever, such invalidity shall not affect the validity or operation of any other term, clause or provision and such invalid term, clause or provision shall be deemed to have been deleted from this Agreement.



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9.6 Despite section 8 herein, this Agreement is binding upon the Owner and the Owner's Property, the Owner's heirs, executors, administrators, successors, tenants and assigns and the person in possession of the Owner's Property. Sections 6.1 and 9.1 shall survive the termination of this Agreement.

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9.7 No length of time or of enjoyment by the Owner shall enure to give any right, title or interest to the Owner, or their successors in title, in the subject lands or to maintain the said works on, under across or above, as the case may be, the said road allowance or shall deprive the City by the operation of any limitation period or otherwise of any right to require the removal thereof and restoration of the road allowance.

9.8 Any waiver of, or consent to depart from, the requirements of any provision of this Agreement shall be effective only if it is in writing and signed by the Party giving it, and only in the specific instance and for the specific purpose for which it has been given. No failure on the part of any Party to exercise, and no delay in exercising, any right under this Agreement shall operate as a waiver of such right. No single or partial exercise of any such right shall preclude any other or further exercise of such right or the exercise of any other right.

[Signing page to immediately follow]

IN WITNESS WHEREOF the City and the Owner have affixed their respective corporate seals under the hands of their officers duly authorized in that behalf, or under their hands as the case may be, as of the date first above written.



Approved as to form and content by Public Works:
CF

Approved as to form by Legal Services:
AK

Authority to enter into Agreement delegated to Staff as a routine real estate matter in accordance with Item 21, Committee of the Whole Report 01-029 adopted by Council September 18, 2001 as amended.
 Precedent approved by Legal Services.

CITY OF HAMILTON

By: [Signature]
 Fred Esserberger Mayor

By: [Signature]
 Lisa Barroso A/ City Clerk

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 Approved by: [Signature]

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(for corporate Owner):

[LEGAL NAME OF OWNER]

Per: _____
 Title: _____

Per: _____
 Title: _____

I/We have the authority to bind the corporation.

(for individual Owner(s):
 SIGNED, SEALED and DELIVERED

In the presence of)
Susan R. Wigle)
 Witness (Print))
Susan R. Wigle)
 Witness (Sign)

[Signature]
 Name: MAGAPU, RISHI PARASHAR

[Signature]
 Name: MACKENZIE, RACHEL KATHLEEN



Hamilton

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SCHEDULE "A"

LEGAL DESCRIPTION OF OWNER'S PROPERTY

PT LT 3 BLK 4 RANGE 3 JAMES MILLS SURVEY; PT LT 4 BLK 4 RANGE 3 JAMES MILLS SURVEY (BTN BOLD ST, LOCKE ST, HUNTER ST, PEARL ST) AS IN AB289999; CITY OF HAMILTON

City of Hamilton

PIN # 17140-0081 (LT)

SCHEDULE "B"

THE ENCROACHMENT

Encroachment permitted on the City's Property for:

[PROVIDE DETAILED INFORMATION REGARDING THE ENCROACHMENT THIS SHOULD INCLUDE A GENERAL LABEL FOR THE ENCROACHMENT AS WELL AS ENOUGH DETAIL ABOUT THE ENCROACHMENT, IT'S SIZE AND IT'S LOCATION AS IT RELATES TO THE CITY'S PROPERTY TO FULLY IDENTIFY ITS PARAMETERS. THIS SHOULD ALSO INCLUDE ADVISING WHETHER THE ENCROACHMENT IS COMMERCIAL OR RESIDENTIAL IN NATURE]

Portion of wooden front porch commencing 1.55m more or less easterly from the southwest corner of the property municipally known as 294 Bold Street, Hamilton, encroaches onto the road allowance of Bold Street, Hamilton, 1.22m in length x 0.66m in width.

Portion of wooden front porch steps commencing 2.77m more or less easterly from the southwest corner of the property municipally known as 294 Bold Street, Hamilton, encroaches onto the road allowance of Bold Street, Hamilton, 2.13m in length x 0.66m in width.

These encroachments are residential in nature.

on Part , Reference Plan 62R-, PIN