

**CITY OF COLD LAKE
ENCROACHMENT AGREEMENT**

THIS AGREEMENT made this _____ day of _____, 2010.

BETWEEN:

THE CITY OF COLD LAKE

a municipal corporation in the Province of Alberta,

(hereinafter referred to as the "City")

OF THE FIRST PART

- and -

**MICHAEL CRAIG PROFESSIONAL CORPORATION
OF PO BOX 1169
COLD LAKE, ALBERTA**

(hereinafter referred to as the "Grantee")

OF THE SECOND PART

WHEREAS City of Cold Lake has an interest in certain lands within the City of Cold Lake, in the Province of Alberta, (the Municipal Lands);

AND WHEREAS the Grantee is the registered owner of certain lands legally described as Plan 4969HW, Block 5, Lot 7, (the "Grantee's Lands");

AND WHEREAS the Grantee has requested the City to grant a licence to permit for an encroachment on the Municipal Lands as outlined in blue on the attached Schedule 'A'

AND WHEREAS The City of Cold Lake has agreed to grant the Grantee a licence to encroach subject to the terms of this agreement:

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the premises, covenants, conditions and terms contained herein, the parties hereto agree as follows:

1. **Definitions**

In this Agreement

- (a) "Agreement" means this encroachment agreement and any amendments, schedules and supplements to it;

- (b) "Municipal Lands" means the interest in those lands of the City of Cold Lake consisting of the road right-of-way for 53rd Street as shown in Schedule 'A' attached hereto.

- (c) "Development" means the sole purpose for which the Grantee is entitled to encroach on the Municipal Lands with the Building, Building Façade and Building Overhang, more particularly described in Schedule 'A' attached hereto and forming part of this Agreement;
- (d) "Encroachment" means that portion of the Building, Building Façade and Building Overhang that is licensed to encroach onto the Municipal Lands;
- (e) "Encroachment Area" means the portion of the Municipal Lands licensed by the City to be occupied by the Encroachment as more particularly dimensioned and further identified on the real property report attached to this Agreement as Schedule 'A';

2. **Consideration and Right to Maintain**

In consideration of the sum of \$ 250.00 paid to the City of Cold Lake by the Grantee at the commencement of this Agreement and the further sum of **One Dollar(s) (\$1.00)** plus municipal taxes applicable to the Encroachment Area every year thereafter until termination (such sum having been received satisfactorily by the City of Cold Lake) and subject to the terms and conditions of this Agreement, the City of Cold Lake gives to the owner the right, license, and privilege to continue the Encroachment.

3. **Limited Purpose**

The Encroachment granted hereby shall be limited solely to the portion of the Building, Building Façade and Building Overhang identified in Schedule "A" and the Grantee shall not cause or permit any other development whatsoever within the permitted Encroachment Area.

4. **Permits**

Nothing in this Agreement in any way constitutes a development permit or a building permit in the Encroachment Area as shown in Schedule "A" hereto and the Grantee shall not cause or permit any new development whatsoever within the permitted Encroachment Area without receiving a development permit and/or building permit;

5. **Municipality's Rights**

The City of Cold Lake shall have the full right to occupy and use the Encroachment Area in any manner whatsoever deemed appropriate by the City of Cold Lake; provided, that the City of Cold Lake shall not unreasonably interfere with the rights herein conferred upon the Grantee;

6. **Environmental Obligations**

Notwithstanding any other term or condition of this Agreement, the Grantee shall accept the Grant as contemplated herein on the understanding and agreement that there are no agreements, conditions, warranties or representations relating to the Encroachment

Area other than as stated in this Agreement and the City does not warrant the quality, condition or sufficiency of the Encroachment Area for any use or purpose and the grant of the Encroachment is taken by the Grantee on a strictly "as is, where is" basis.

Without restricting the generality of the foregoing, the Grantee shall comply with all legislation dealing with any environmental issues related to the Encroachment Area including, but not limited to, the Environmental Protection and Enhancement Act, R.S.A. 2000 c. E-12, as amended, and regulations thereunder or any successor legislation. The responsibility of the Grantee with respect to environmental obligations will continue to be enforceable during and after the term of this Agreement.

7. **Utilities and Drainage**

- (a) In the event that City of Cold Lake deems it necessary or appropriate to cause or allow third parties to construct or install permanent underground or above ground utility lines, pipelines facilities, transmission lines, drainage swales and sidewalks etc. (the "work"), which will cross the Encroachment Area, or to perform such other work upon the Encroachment Area as may be deemed necessary in the sole discretion of the City of Cold Lake, the Grantee shall in no way interfere or hinder the construction, installation, repair or maintenance undertaken by the City of Cold Lake or any person to whom the City of Cold Lake has granted such permission. The Grantee shall provide further documentation as may be deemed appropriate in the sole discretion of the City of Cold Lake for the purposes of expediting or permitting the "work" within the Encroachment area by the City of Cold Lake or the nominee of the City of Cold Lake.
- (b) In the event the City of Cold Lake or members of the Public body request and deem it necessary to perform such work within the Encroachment Area, the Grantee is responsible for the removal of the development within the Encroachment Area, at the request of the City of Cold Lake.

8. **Grantee's Obligations**

The Grantee Shall:

- (a) **Grantee's Sole Expense** - keep, maintain, and repair the Encroachment and the Encroachment Area in good order and condition. In the event that the Municipality or any franchise utility deem it necessary to access services within the Encroachment Area, at any time, the Grantee shall be responsible for any and all costs which may incur from work undertaken as a result of the Encroachment. If the Encroachment must be removed, the Grantee shall be responsible for the removal of the Encroachment at the Grantee's sole expense within 90 (Ninety) days of written notification or other mutually agreed to time period. If emergency access is required, the Municipality may remove the Encroachment at the Grantee's sole expense at any time.
- (b) **No increase, rebuilding or alterations in Encroachment Area** - ensure that the Encroachment Area is not enlarged, added to, rebuilt, or structurally altered except as may be necessary to maintain and repair the permitted encroachment;

(c) **Re-development** - ensure that any further development built on the Grantee's Land will not encroach in, on, over or under the Municipal Lands;

(d) **Taxes** - promptly pay when due any additional municipal property taxes (including without limitation local improvement taxes) that are assessed and levied against the Grantee's Lands by virtue of the Encroachment. The Grantee acknowledges and agrees that the municipal assessment and tax records for the Grantee's Lands may be amended to include the Encroachment and the Encroachment Area;

(f) **Discharges** - promptly discharge any and all encumbrances registered against the Encroachment Area, including Builder's Liens which are registered as a result of any action of the Grantee, its agents, officers, employees or independent contractors. In the event the Grantee fails to discharge any such encumbrance within fifteen (15) days of receiving notice from the City of Cold Lake, the City of Cold Lake may forthwith terminate this Agreement.

9. **Termination**

This agreement shall be in force and effect for a period of five (5) years from the date of signing but may be terminated by the City as follows:

- (a) The City of Cold Lake gives to the owner the right, license, and privilege to continue the Encroachment until such time as the Municipality determines that the affected area of the Municipal Lands are required for public use and shall give to the Grantee not less than Ninety (90) days written notice of such termination, which notice shall terminate this Agreement at the expiration of notice period given, or
- (b) If the Grantee defaults in the performance of any covenant, condition or term of this agreement and such default is not remedied within (10) days notice of such default, this agreement shall thereupon terminate without further notice.

10. **Grantee's Obligations on Termination**

Upon termination of this Encroachment, the Grantee shall remove all property belonging to the Grantee from the Encroachment Area and restore the Encroachment Area to a level and condition equivalent to that which existed prior to the commencement of the Encroachment and to the City of Cold Lake Municipal Engineering Standards.

If the Grantee fails or neglects to restore the Encroachment Area or fails to remove any and all property of the Grantee from the Encroachment Area within ninety (90) days of the termination of the Encroachment, the City of Cold Lake shall have the right, but not the obligation, to take such action as is reasonably necessary in the sole discretion of the City of Cold Lake to remove all property of the Grantee from the Encroachment Area, and to restore the Encroachment Area to the level and condition equivalent to that which existed prior to the commencement of this Encroachment.

The City of Cold Lake shall not be responsible for any loss or damage, however caused, to any property of the Grantee hereby removed from the Encroachment Area, and the Grantee further agrees to compensate the City of Cold Lake, its servants, contractors or agents pursuant to this clause. Any cost incurred by the City of Cold Lake pursuant to this clause shall be a charge and encumbrance against the Grantee's Lands and the Grantee hereby charges the Grantee's Lands for such costs;

11. **Quiet Possession**

The Grantee by performing and observing the covenants and conditions contained herein, shall be entitled to peaceably exercise the rights herein granted to the Grantee without any unreasonable hindrance, molestation or interruption from the City of Cold Lake, subject always to the terms of the Agreement;

12. **Owner's Possession**

If the Grantee fails or neglects within thirty (30) days of the receipt of notice from City of Cold Lake or a mutually agreed to time period to comply with the requirements of this Agreement, without notice in the case of an emergency or in the event that the City deems it necessary and in the public interest terminate this agreement and have the encroachment removed prior to the expiration date of this agreement specified in Clause 21, the City of Cold Lake may (but is not required to);

(a) perform or cause to be performed the requirements of this Agreement on behalf of and at the Grantee's cost and expense. The Grantee will reimburse the City of Cold Lake for all costs, charges, and expenses incurred by the City of Cold Lake on behalf of the Grantee within (10) days of receipt by the Grantee of an invoice for them;

(b) demolish and remove the Encroachment on behalf of and at the Grantee's cost, charges and expenses and terminate the Grantee's rights under this Agreement. The Grantee will reimburse the City of Cold Lake for all costs, charges and expenses incurred by the City of Cold Lake for undertaking such work within ten (10) days of receipt of an invoice from the City of Cold Lake for such costs;

(c) pursue any right or remedy which the City of Cold Lake may be entitled to under this Agreement, or in law or equity;

13. **Compliance with Law**

The Grantee shall at all times and in all respects abide by all laws, bylaws, legislative and regulatory requirements of any governmental or other competent authority relating to the use and occupation of the Encroachment Area by the Encroachment;

14. **Notice of Accidents**

The Grantee shall provide the City of Cold Lake prompt written notice of any accident, damage or injury occurring on the Encroachment Area however caused;

15. **Insurance**

The Grantee shall carry comprehensive liability insurance with insurable limits of no less than TWO MILLION (\$2,000,000.00) DOLLARS for each occurrence or incident and this insurance shall name the City of Cold Lake as an insured party and the Grantee shall provide proof of such insurance to the satisfaction of the City of Cold Lake upon demand.

The Grantee shall also waive its rights of subrogation against the City of Cold Lake. The City of Cold Lake reserves the right from time to time to require the Grantee to increase its comprehensive liability insurance coverage where such coverage would be considered necessary by a prudent owner of similar improvements in the Province of Alberta;

16. **Indemnity**

Save and except for the negligent act or willful misconduct of the City of Cold Lake, the Grantee shall indemnify the City of Cold Lake and save it harmless from and against all claims, actions, damages, liabilities and expenses in connection with losses of life, personal injury, damage to property, or any other damage, loss or injury which are based open, or arise out of or are in any way connected with the Encroachment or the Encroachment Area and the exercise of the rights and privileges contained in this Agreement, including but not limited to the following:

- (a) loss or damage suffered or incurred by the Grantee or those for whom the Grantee is in law responsible;
- (b) loss or damage suffered or incurred by the City of Cold Lake or those for whom the City of Cold Lake is in law responsible (including without limitation any additional costs and expenses incurred by the City of Cold Lake in carrying out work on the Municipal Lands by reason of the Encroachment);
- (c) damage or expense sustained by the Grantee and related to the removal of the Encroachment;
- (d) any claim for loss or damage made, brought or prosecuted by anyone else;

17. **Grantee's Risk**

All property of the Grantee which may hereafter be located on, under, or over or adjacent to the Encroachment Area shall be a the sole risk of the Grantee and the City of Cold Lake shall not be liable for any loss or damage thereto howsoever caused and the Grantee hereby releases the City of Cold Lake from all actions, claims, demands, suits or proceedings whatsoever in respect of any such loss or damage, except and to the

extent such loss or damage is caused by the negligence of the City of Cold Lake or its servants or agents;

18. **Compensation for Damages**

The Grantee shall compensate the City of Cold Lake for all damage to the property of the City of Cold Lake arising out of the activities of the Grantee on or adjacent to the Encroachment, whether or not such activities are in pursuance of the rights herein granted to the Grantee;

19. **Owner's Obligations After Termination**

Any obligation of the Grantee to protect the City of Cold Lake shall survive the termination of this Agreement;

20. **Successors**

The Agreement shall be binding upon and enure to the benefit of the City of Cold Lake and its successors, licensees and permitted assigns, and the Grantee and its successors and assigns;

21. **Renewal**

Upon ninety (90) days written notice from the Grantee given before the expiry of the term herein provided, the lease may be renewed upon a grant by Council for a further term of five (5) years on the same terms and conditions excepting the annual sum of \$1.00. The annual sum to be paid in consideration of the renewed Encroachment Agreement shall be in accordance with the fees set out in the City's User Fee Bylaw at the time of the renewal, failing which the renewal shall not commence.

22. **Charge**

The City of Cold Lake shall have a charge upon the Grantee's Lands and the Grantee hereby charges the Grantee's Land for any sum that may at any time be payable to the City of Cold Lake pursuant to this Agreement and the City of Cold Lake shall be entitled to file a Caveat against the title to the Grantee's Land to protect such interest under this Agreement;

23. **Registration**

At the Sole cost of the Grantee, the Grantee is required to register this Encroachment Agreement by Caveat with the Northern Alberta Land Titles Office.

24. **Notice**

All notices under this Agreement shall be in writing and sent by registered or certified mail as follows:

TO the Grantor at:

**CITY OF COLD LAKE
5513 48th Ave.
Cold Lake, Alberta T9M 1A1**

Attention: Manager of Planning and Development

TO the Grantee at:

**Michael Craig Professional Corporation
PO Box 1169
Cold Lake
Alberta T0A 1T0**

At such time the property is conveyed, the City of Cold Lake must receive notice by way of a copy of Certificate of Title registered in the new owners name, delivered or faxed, within fourteen (14) days of registration of same, or this agreement will be considered null and void.

25. **Whole Agreement**

The Grantee acknowledges and agrees that the rights herein conferred to the Grantee are only such rights as are specified herein and that the City of Cold Lake has made no representations, warranties, promises or agreements, either expressed or implied, beyond those contained herein;

26. **Severability**

Should part of this Agreement be or become illegal or unenforceable, it will be considered severable from this Agreement and the remainder of this Agreement will remain in effect as though the illegal or unenforceable parts had not been included.

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the day and year first above written:

CITY OF COLD LAKE (Seal)

MAYOR

**Kevin Nagoya,
CHIEF ADMINISTRATIVE OFFICER**

**Michael Craig Professional Corporation
GRANTEE (Seal)**

Schedule 'A'

