

THIS TEMPORARY USE AGREEMENT made on the 12th day of January, 2022.

BETWEEN:

MUNICIPALITY OF MIDDLESEX CENTRE

(hereinafter referred to as the “**Municipality**”)

OF THE FIRST PART

and

Russel James Vanderhyden

(hereinafter collectively referred to as the
“**Owner**”)

OF THE SECOND PART

WHEREAS the **Owner** is the registered **Owner** of the land (hereinafter referred to as the “**Land**”) known municipally as 13277 Ten Mile Road and described as Concession 9 N Pt Lot 25 (geographic Township of London); **Municipality** of Middlesex Centre, in the County of Middlesex, as described in Schedule “A” to this Agreement;

WHEREAS the **Owner** has made application, pursuant to section 39 of the *Planning Act*, to the **Municipality** of Middlesex Centre, for permission to erect a new dwelling on the **Land**, as generally shown in Schedule “B”, while the existing single detached dwelling remains on the **Land**;

WHEREAS on January 12th, 2022 the Council of the **Municipality** of Middlesex Centre did enact temporary use Zoning By-law Amendment 2022-xxx on the following condition:

That the **Owner** be required to enter into a Temporary Use Agreement with the **Municipality** and submit a deposit of \$10,000 to ensure that the removal of the existing single-detached dwelling occurs.

AND WHEREAS the parties have agreed that this Agreement satisfactorily addresses the above mentioned condition relating to a deposit to be lodged with the **Municipality**;

NOW THEREFORE THIS AGREEMENT WITNESSES that, in consideration of the sum of one dollar (\$1.00) now paid by the **Municipality** to the **Owner**, the receipt and sufficiency of which consideration the **Owner** hereby acknowledges, and in consideration of the **Municipality** issuing a building permit the **Owner** agrees and covenants with the **Municipality** as follows:

1. Within ninety (90) days of the Final Inspection with respect to the proposed new single detached dwelling on the **Land**, the **Owner** shall remove from the **Land** the existing single detached dwelling.

2. Notwithstanding paragraph 1, whether or not a Final Inspection has been completed in connection with the proposed new single detached family dwelling on the **Land**, the **Owner** shall remove from the **Land** the existing single detached dwelling on or before January 12th, 2025.
3. The **Owner** agrees to lodge with the **Municipality** at the time of the execution of this Agreement a Letter of Credit from a chartered bank or such other form of security as is satisfactory to the **Municipality** guaranteeing payment of TEN THOUSAND (\$10,000.00) DOLLARS, for the purpose of securing performance of the **Owner's** obligation in paragraphs 1 and 2 above; and, subject to them having realized upon it as permitted by paragraph 5 of this Agreement, the **Municipality** shall return the Letter of Credit or other security, as the case may be, to the **Owner** after the demolition has been completed to the satisfaction of the **Municipality**.
4. In addition to any other remedy which the **Municipality** may have against the **Owner** for breach of this Agreement, after first giving five (5) days' notice to the **Owner**, the **Municipality** may, at any time and from time to time, realize upon and demand that all or any part of the funds available under such Letter of Credit, or other security, be paid to the **Municipality** and, when so paid, the same shall be placed in a separate account in the name of the **Municipality** which account shall stand as security for the performance the **Owner's** obligation in accordance with paragraphs 1 and 2; and the provisions of this Agreement regarding the release of the Letter of Credit, or other security, shall apply mutatis mutandis to the release of funds out of the said separate account to the **Owner**. The **Municipality** may use the funds derived from a call or calls on the Letter of Credit, or other security, to pay the cost of doing any work or thing in respect of which the **Owner** is in default, or to recover such costs if the **Municipality** has done such work or thing prior to realizing upon and enforcing the security. Similarly, the **Municipality** may recover any money which it has paid and which the **Owner** ought to have paid or any money, which is otherwise due to the **Municipality** from the **Owner** under the terms of this Agreement. If the funds derived from the security exceed the amount due to the **Municipality**, the excess shall be refunded to the **Owner** of the Land after such removal has been completed to the satisfaction of the **Municipality**; but, if there is a deficiency, the same shall be recoverable from the **Owner** forthwith upon demand.
5. If the **Owner** does not remove the existing single-detached dwelling in accordance with paragraphs 1 or 2, then, in addition to any other remedy which the **Municipality** may have against the **Owner** for breach of this Agreement, the **Municipality**, at its option, after first giving the **Owner** at least thirty (30) days' written notice;

- 5.1 May enter and re-enter the Land and demolish and remove the existing single detached dwelling, as aforesaid, and may recover the cost of so doing from the **Owner**;
- 5.2 May make any payment which ought to have been made by the **Owner** and recover the amount thereof from the **Owner**; and/or
- 5.3 May do any other thing required of the **Owner** by this Agreement and recover the cost of so doing from the **Owner**; and it is understood and agreed by the parties that the entry upon the Land by the **Municipality** or the doing of anything by the **Municipality** as authorized by this paragraph 5 shall be as agent for the **Owner** and shall not be deemed an acceptance thereof by the **Municipality** and shall not in any way relieve the **Owner** of the obligations of this Agreement.
6. The **Owner** shall have the right to contest that reasonableness of the amount of any of the **Municipality's** expenses in respect of which the **Owner** is required to reimburse the **Municipality** pursuant to this Agreement, provided that such right must be exercised by written notice to the **Municipality** within thirty (30) days after the **Owner** has been advised of the amount of such expenses. Such notice to the **Municipality** shall be accompanied by sufficient funds to pay the amount being contested or security therefore. The amount of such expenses shall be determined by a Court of competent jurisdiction and the **Owner** shall indemnify the **Municipality**, on a Solicitor and Client basis, for all costs or expenses incurred by the **Municipality** in connection with such determination.
7. Where in this Agreement the **Municipality** is given a discretion, or the right to make a decision, in matters relating to the administration of this Agreement the **Municipality** shall act by its Clerk or such other officer as the Clerk or Council of the **Municipality** may designate for such purpose. Before exercising its discretion or making its decision, the **Municipality** may seek the advice of a Solicitor, an Engineer, a Planner or other consultant as may be relevant to the matter in respect of which the discretion is to be exercised or the decision to be made.
8. Every provision of this Agreement by which the **Owner** is obliged in any way shall be deemed to include the words, "at the expense of the **Owner**" unless the context specifically otherwise requires.
9. In the event that there are monies due from the **Owner** to the **Municipality** which have not been paid within fifteen (15) days after demand thereof by the **Municipality**, interest shall be payable on the amount due at the rate of twelve (12%) percent per annum calculated from the date of demand; and the amount due together with interest thereon shall constitute a lien upon the Land.

10. The **Owner** shall not call into question, directly or indirectly, in any proceedings whatsoever, in law or in equity, or before any administration tribunal, the right of the **Municipality** to enter into this Agreement or to enforce each and every term, covenant and condition herein contained and this Agreement shall be pleaded as an estoppel against the **Owner** in such proceedings.
11. Time shall be of the essence hereof in all respects; and the right of the **Municipality** to require strict performance by the **Owner** of any and all obligations imposed upon it hereunder shall not be affected in any way by any previous waiver, forbearance or course of dealing.
12. Any notice, request, order, demand, certificate or any other communication required or permitted to be given under this Agreement shall be in writing and, unless some other method of giving the same is accepted by the person to whom it is given, shall be given by registered mail or by being delivered to the person to whom it is to be given at the appropriate address set out below, or such other address as may be furnished by such person, and shall be effective at the time of delivery thereof or, if mailed shall be deemed effective four (4) days after the date of mailing thereof unless at any time during such four days there is a strike or other labour disruption of the postal service at either the point of mailing or the place of delivery, in which event, delivery by mail shall be deemed effective when actually received by the addressee; and any such communication may be delivered or mailed to:

Russel James Vanderhyden
13277 Ten Mile Road
Middlesex Centre, Ontario
N0M 2A0

and in the case of the **Municipality** shall be as follows:

Municipality of Middlesex Centre
10227 Ilderton Road, RR 2
Ilderton, Ontario
N0M 2A0
Attention: Clerk

13. If any provision of this Agreement shall be found or declared by a Court of competent jurisdiction to be invalid, unenforceable or *ultra vires* the **Municipality**, then such provision shall conclusively be deemed to be severable and the remainder of this Agreement, *mutatis mutandis*, shall be and remain in full force and effect.

14. In this Agreement, unless the contrary intention appears, words importing only singular number or masculine gender shall include persons, parties or things of the same kind than one and the feminine and neuter gender; and if there be more than one **Owner**, including any subsequent owners of the **Land**, the covenants of such **Owner** shall be joint and several.

15. The covenants, agreements, conditions and undertakings herein contained on the part of the **Owner** shall run with the **Land** and shall be binding upon the **Owner** and upon the **Owner's** successors and assigns, as owners and occupiers of the **Land** from time to time and shall be appurtenant to the adjoining highways in the ownership of the appropriate authority; and this Agreement shall endure to the benefit of and be binding upon the appropriate authority and its successors and assigned.

IN WITNESS WHEREOF the **Owner** has hereunto set their hand and seal, and the **Municipality** has hereto affixed its corporate seal under the hands of its duly authorized officers.

SIGNED, SEALED AND DELIVERED

Russel James Vanderhyden, Owner

Authorized by By-law 2022-xxx
of Council on the
12th day of January, 2022

Aina DeViet, Mayor

James Hutson, Clerk

SCHEDULE "A"

TO

TEMPORARY USE AGREEMENT

B E T W E E N:

MUNICIPALITY OF MIDDLESEX CENTRE

OF THE FIRST PART

- and -

RUSSEL JAMES VANDERHYDEN

OF THE SECOND PART

The "Land"

ALL AND SINGULAR that certain parcel or tract of land and premises situate, lying and being in the Municipality of Middlesex Centre, (geographic Township of London), in the County of Middlesex and being composed of:

Concession 9 N Pt Lot 25
(geographic Township of London)
Municipality of Middlesex Centre

SCHEDULE "B"
TO
TEMPORARY USE AGREEMENT

