

THIS TEMPORARY USE AGREEMENT made on the 08th day of November, 2023.

BETWEEN:

**MUNICIPALITY OF MIDDLESEX CENTRE**

(hereinafter referred to as the "**Municipality**")

OF THE FIRST PART

and

**Joshua Fleming and Jazmin Fleming**

(hereinafter referred to as the "**Owner**")

OF THE SECOND PART

**WHEREAS** the Owner is the registered Owner of the land (the "**Land**") known municipally as 20706 Vanneck Road and described as Concession 3 N PT Lot 32 RP 33R2565 Part 2 PT Part 1 PT RD Allow RP 33R6206 Part 1 (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" (the "**New Dwelling**"), while the existing single detached dwelling remains on the Land for a temporary basis of not more than three (3) years;

**WHEREAS** on 18th day of October, 2023, the Council of the Municipality of Middlesex Centre did enact temporary use Zoning By-law Amendment 2023-110 on the following condition:

That the Owner be required to enter into a Temporary Use Agreement with the Municipality and submit a deposit of \$15,000 to ensure that the removal of the existing single-detached dwelling occurs.

**AND WHEREAS** the Parties have agreed that this Agreement satisfactorily addresses the condition as set out in Zoning By-law Amendment 2023-110 relating to a deposit to be lodged with the Municipality;

**AND WHEREAS** the Municipality shall be responsible for conducting a final inspection to confirm compliance with all permits, licenses and approvals issued by the Municipality for the New Dwelling (the "**Final Inspection**");

**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. On the earlier of either (i) November 08, 2026; or, (ii) within a period of ninety (90) calendar days of the Final Inspection with respect to the proposed New Dwelling on the Land, the Owner shall remove from the Land the existing single detached dwelling in accordance with all applicable laws.
2. At the time of the execution of this Agreement the Owner shall provide the Municipality with a Letter of Credit from a chartered bank in a form satisfactory to the Municipality in the amount of FIFTEEN THOUSAND (\$15,000.00) DOLLARS, for the purpose of securing performance of the Owner's obligation to remove the existing dwelling from the Land as required by section 1 above.
3. In addition to any other remedy which the Municipality may have against the Owner for any breach of this Agreement, after first giving ten (10) calendar days' written notice to the Owner, the Municipality may, at any time and from time to time, realize upon and enforce any security available to it and use the funds derived therefrom to pay the cost of doing any work or thing in respect of which the Owner is in breach or 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 upon completion of all terms and conditions of this Agreement as confirmed by the Municipality in writing but, if there is a deficiency, the same shall be recoverable from the Owner forthwith upon demand.
4. In addition to any other remedy, that the Municipality may have against the Owner for breach of this Agreement, the Municipality, at its sole option, may adopt, engage in and pursue any one or more for the following remedies:

- a. Enter and re-enter the Land and complete any part or all of the work or obligations under this Agreement of which there has been a default, including the demolition of the existing single detached dwelling unit and may recover the cost of so doing from the Owner;
- b. Make any payment, that ought to have been made by the Owner and recover the amount thereof from the Owner;
- c. Do any other thing required of the Owner under this Agreement and recover the cost of doing so from the Owner;

provided that the Municipality shall give the Owner at least five (5) days prior written notification, and by the Municipality doing anything authorized by this section shall be as agent for the Owner and shall not in any way relieve the Owner of the obligations of this Agreement, and the Owner covenants and agrees that neither it nor any of its agents, servants, officers or contractors shall interfere in any way with anything done or authorized to be done pursuant to this section by the Municipality.

5. In addition to any other remedy that the Municipality may have against the Owner for breach of this Agreement, the Municipality may bring an action to restrain or to compel specific performance of all or any part of this Agreement and for damages.
6. In the event that the Owner due to unforeseeable circumstances is unable to fulfil the terms and conditions of this Agreement, including but not limited to the removal of the existing single detached dwelling as required by section 1 above, the Owner may apply to Council for the Municipality for an extension of the temporary use by-law under the provisions of section 39(3) of the *Planning Act*.
7. 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 thereof. The amount of such expenses shall be determined by a Court of competent jurisdiction and the Owner shall indemnify the Municipality, on a full indemnity basis, for all costs or expenses incurred by the Municipality including but not limited to legal and consulting fees incurred in connection with such determination.



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:

Joshua Fleming and Jazmin Fleming  
20706 Vanneck Road  
Middlesex Centre, Ontario  
N6H 5L2  
Email: josh@concretus.ca

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  
Email: hutson@middlesexcentre.ca

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 its 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 Municipality; and this Agreement shall enure to the benefit of and be binding upon the Municipality and its successors and assigns.
16. The Owner shall not assign this Agreement without the prior written consent of the Municipality which consent is not to be unreasonably withheld by the Municipality provided that any such assignee executes an agreement assuming all of the obligations of the Owner under this Agreement in a form satisfactory to the Municipality's Solicitor.

**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.

*One signature page to follow.*

**SIGNED, SEALED AND DELIVERED**



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Joshua Fleming, Owner



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Jazmin Fleming, Owner

**THE MUNICIPALITY OF MIDDLESEX  
CENTRE**

Authorized by By-law 2023-110  
of Council on the  
18th day of October, 2023

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Aina DeViet, Mayor

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James Hutson, Clerk  
*I/We have the authority to bind the Municipality.*

**SCHEDULE "A"**

to

**TEMPORARY USE AGREEMENT**

**BETWEEN:**

**MUNICIPALITY OF MIDDLESEX CENTRE**

**OF THE FIRST PART**

- and -

**Joshua Fleming and Jazmin Fleming**

**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, (Middlesex Centre Township/London Township), in the County of Middlesex and being composed of:

Concession 3 N PT Lot 32 RP 33R2565 Part 2 PT Part 1 PT RD Allow RP 33R6206 Part 1 (geographic Township of London), Municipality of Middlesex Centre



**SCHEDULE "B"**  
  
to  
  
**TEMPORARY USE AGREEMENT**

