

Attachment 3
11977 Tecumseh Road – Kona Sushi Inc.
Encroachment Agreement

THIS AGREEMENT made in triplicate, this ____ day of July, 2021,

BETWEEN:

THE CORPORATION OF THE TOWN OF TECUMSEH

Hereinafter called the TOWN of the FIRST PART

- and -

KONA SUSHI INC.

Hereinafter called the LICENSEE of the SECOND PART

WHEREAS:

1. the Licensee is the registered owner of certain lands and premises in the Town of Tecumseh, in the County of Essex and Province of Ontario, more particularly described in Schedule “A” annexed hereto and forming part of this agreement (the Licensee Lands”); and
2. the Licensee has applied to the Town for permission to create and thereafter continue one or more encroachment(s) of the public highway known as Shawnee Road, which encroachment(s) is/are more particularly described in the Site Plan a reduced copy of which is attached as Schedule “B” annexed hereto and forming part of this agreement and otherwise on file at Town offices (the “Encroachment”).

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the premises, and other good and valuable consideration, the parties hereto hereby agree as follows.

1. The Town permits the Licensee to occupy and use the said public highway for the purpose of the continuing Encroachment for a maximum term not exceeding the lifetime of the encroaching structure. In the event of any disagreement as to the estimated or actual lifetime of the encroaching structure, the opinion of the Town’s Chief Building Inspector shall prevail and be final and binding on the parties. Notwithstanding the foregoing, the term hereof shall automatically terminate and be at an end in the event that the portion of the public highway subject to the Encroachment, shall be closed or stopped up by the Town so as to no longer constitute a public highway with the Town being at liberty (without obligation) to convey the lands comprising the extent of the encroachment to the Licensee at the sole expense and cost of the Licensee and otherwise on such terms as the parties may agree.
2. The Licensee covenants and agrees to maintain the said encroachment in good repair at all times and to the satisfaction of the Town’s Chief Building Inspector.
3. The Licensee further covenants and agrees to obtain the necessary permits from all pertinent departments of the Town prior to any work on the Encroachment, and to comply with all federal, provincial and municipal legislation pertaining to the construction, maintenance, repair and existence of the Encroachment and the Site Plan Agreement executed by the parties and registered on title to the Licensee Lands.
4. It is expressly agreed that upon destruction, removal or replacement of the encroaching structure, or upon partial destruction or damage to the encroaching structure from any cause including the voluntary act of the owner(s) thereof, to the extent of more than sixty percent (60%) of its assessed value, exclusive of its foundations, or upon breach by the Licensee of any of

the provisions of this agreement which breach shall not have been corrected by Licensee within 30 days of demand or such sooner time noted in such demand if in the Town's opinion such breach may adversely affect the public interest, the permission hereby granted shall, without any further action or notice and at the sole option of the Town, be terminated and at an end and the Town may require the Licensee to forthwith remove the Encroachment and restore the lands encroached upon to the satisfaction of the Chief Building Inspector of the Town and upon failure so to do so the Town may itself do all things necessary for the removal of the Encroachment and for such purpose may enter upon the Licensee Lands and the expense of such removal, restoration and entry shall be paid by the Licensee forthwith upon demand and payment of such expenses may, in the discretion of the Town, be enforced in the same manner as property taxes payable in respect of the Licensee Lands.

5. The Licensee further covenants and agrees to pay to the Town, any additional property taxes or other rates and charges, if any, levied or imposed on or in respect of the said portion of the public highway encroached upon or over by the Encroachment.

6. The Licensee further covenants and agrees to assume the responsibility and to pay for any additional costs or charges which the Town, Essex Power Corporation, Essex Powerlines Corporation, Union Gas Limited, Cogeco Cable or Bell Canada, and their respective successors and assigns, may reasonably incur in the future installation or relocation of their services or utility plants by reason of the Encroachment and the payment of such costs may be enforced in the same manner as property taxes payable in respect of the Licensee Lands.

7. It is further understood and agreed by and between the parties that if due to any emergency so declared by the Town's Chief Building Inspector, vacant possession of the lands encroached upon is required by the Town (whether in its own behalf or at the request of the utility providers mentioned in this agreement) for the purpose of installing, repairing or maintaining watermains or pipes, wires, conduits, sewers or other services or utilities, the Town may give notice to the Licensee forthwith at any time to forthwith deliver vacant possession of the Encroachment to the Town and to therefrom remove all chattels, equipment, fixtures, parking areas, buildings and structures, as the case may be, installed or located therein or thereupon by the Licensee, and upon such notice having been given, the Licensee shall forthwith deliver clear and vacant possession of the Encroachment to the Town, provided that if the Licensee fails so to do, the Licensee shall pay to the Town or any such service provider any costs or additional costs, expenses or damages incurred by the Town or any such service provider by reason of the Licensee's failure. A notice given under this section shall not constitute a termination of this agreement but shall be a suspension thereof which shall be in force and effect during the time the work aforesaid is being carried out, and following the completion of such work this agreement shall again come into and be in full force and effect subject to all the terms, covenants, conditions and provisos hereof.

8. It is further understood and agreed by and between the parties that if the portion of the public highway encroached upon is required by the Town for its purposes, the Licensee shall remove the said Encroachment and restore the said public highway to the condition of the surrounding area at its own expense on sixty (60) days written notice from the Town so to do; provided that if the Licensee fails to remove the Encroachment and restore as aforesaid, the Town may enter upon the Licensee Lands and remove the Encroachment and restore the lands encroached upon, and the expense of such removal and restoration shall be paid by the Licensee forthwith on demand, or at the option of the Town the payment of such expense may be enforced in the same manner as property taxes payable in respect of the Licensee Lands.

9. It is further understood and agreed by and between the parties hereto that if the Town at any time exercises its power or right to terminate this agreement or demand the removal of the Encroachment or suspend or revoke the permission granted herein, the Town shall not be liable to pay any compensation for any loss, costs or damages which may be incurred by the Licensee or any person claiming under the Licensee by reason of such termination, demand or revocation.

10. The Licensee further covenants and agrees to defend, indemnify and save harmless the Town of, from and against all loss, costs or damages which it may suffer or be put to and from and against all claims or actions which may be made or brought against the Town by reason of the Encroachment, its construction, existence, repair or maintenance or resulting

therefrom in any way whatsoever, unless such loss, costs, damages, claims or actions arise due to the negligence of the Town, or the Town's officers, agents or employees.

11. The Licensee further covenants and agrees to provide and maintain public liability and property damage insurance in a form (containing endorsements naming the Town as an additional named insured and providing a cross-liability/separation of insureds clause) in the amount of at least FIVE MILLION DOLLARS (\$5,000,000.00) and satisfactory in form and content (including policy limit) to the Chief Building Inspector of the Town, and a true copy of the said insurance policy shall be filed with the Clerk of the Town. Licensee acknowledges and agrees that the Town shall be entitled to require that such policy limit amount be increased from time to time during the term hereof to take into account inflationary pressures and relevant judicial awards.

12. It is further understood and agreed by and between the parties hereto that by the execution of these presents, the Licensee does hereby expressly and completely release the Town from any and all liabilities, suits, claims and demands (whether for property damage or for personal injury or death and whether founded in tort, contract or quasi-contract) which at any time might be exerted by the Licensee arising out of the existence of the Encroachment or out of any act or omission of the Town, unless the liability, suit, claim or demand arises due to the negligence of the Town or the Town's officers, agents or employees.

13. It is further understood and agreed by and between the parties hereto that if the Licensee agrees to sell the Licensee Lands, the Licensee shall give notice to the Town of such sale at least ten (10) days prior to the completion thereof.

14. It is further understood and agreed by and between the parties hereto that all notices, demands and requests which may be or are required to be given by the Town to the Licensee or by the Licensee to the Town under the provisions of this agreement shall be in writing and may be mailed or delivered and shall be addressed in the case of the Licensee to Filipe Braga, Owner, Kona Sushi Inc., 11977 Tecumseh Road, Tecumseh, Ontario N8N 1R8 and in the case of the Town, to the Clerk, Town Hall, 917 Lesperance Road, Tecumseh, Ontario, N8N 1W9, or to such other address as either party may from time to time designate by written notice to the other.

15. It is further understood and agreed by and between the parties hereto that notwithstanding anything hereinbefore or hereinafter contained and further notwithstanding the execution of this agreement, this agreement shall not go into force or have any effect unless and until this agreement has been registered by and at the expense of the Licensee at the Land Registry Office for Essex (No. 12) and a registered copy thereof delivered to the Clerk of the Town.

16. All professional fees and other expenses, costs and charges incurred by the Town in connection with the preparation and registration of this agreement shall be payable by the Licensee to the Town upon demand, and this agreement shall not have force or effect unless and until such fees, expenses, costs and other charges have been paid in full.

17. It is further understood and agreed between the parties hereto that this agreement shall be binding upon and enure to the benefit of the parties and their respective heirs, personal representatives, successors and permitted assigns, it being acknowledged that in the event of the Licensee selling, conveying, transferring or entering into an agreement for sale or of transfer of any title to or interest in part or all of the Licensee Lands to a purchaser or transferee not approved of in writing by the Town (which approval may not be unreasonably withheld by the Town, but may be made subject to conditions including a condition that such purchaser or transferee enter into a fresh encroachment agreement with the Town in the Town's then standard or usual form), the Town may forthwith terminate this agreement or demand the immediate removal of the Encroachment or forthwith revoke the permission granted for the Encroachment, and may enter upon the Licensee Lands in whole or in part and remove the Encroachment and restore the lands encroached upon and the expense of such removal and restoration shall be paid by the Licensee or by such unapproved purchaser or transferee forthwith on demand or, at the Town's option, the payment of such expense may be enforced in the same manner as property taxes payable in respect of the Licensee Lands; and the Town shall not be liable to pay any compensation for any loss, costs or damages which may be incurred by the Licensee or by such unapproved purchaser or transferee by reason of such termination, demand, revocation, entry,

removal, or restoration.

PROVIDED HOWEVER, that notwithstanding the foregoing, the permission to encroach and this agreement shall be assignable to and assumable by a bona fide mortgagee or chargee of the Licensee Lands.

IN WITNESS WHEREOF, the said parties hereunto affixed their signatures and corporate seals, attested to by the hands of their proper officers duly authorized in that behalf.

Signed, sealed and delivered	)	THE CORPORATION OF THE
	)	TOWN OF TECUMSEH
in the presence of:)	
	)	Per: _____
	)	Name: Gary McNamara
	)	Title: Mayor
)	
	)	c/s
	)	Per: _____
	)	Name: Laura Moy
	)	Title: Clerk
)	
	)	KONA SUSHI INC.
)	
	)	Per: _____
	)	Name: Filipe Braga
	)	Title: Authorized Signing Officer
)	
	)	c/s
	)	I have authority to bind the Corporation.

Schedule A

CON 2 PT LOT
Roll: 37440200001100
Pin: 015671513

Schedule B

Site Plan showing extent of encroachment

