

ENCROACHMENT LICENSE AGREEMENT

THIS ENCROACHMENT LICENSE AGREEMENT (“Agreement”) is made and entered into this 17th day of October, 2025, by and between Roger D. Mitchell (“Grantor”), on the one hand, and Richard Wayne Harris, Personal Representative of the Estate of Kenneth Gene Aikins, an unsupervised estate pending in the Allen County Superior Court under Cause No. 02D02-2507-EU-000376 (the “Personal Representative”), Patricia Louise Harris, Theresa Aranda, and Robert G. Aikins (collectively, the “Heirs”) (the Personal Representative and the Heirs being collectively referred to herein as “Grantee”), on the other hand, under the following circumstances:

WHEREAS, Grantor is the owner of certain real estate and improvements located in Allen County, Indiana, commonly known as 2631 Hursh Road, Fort Wayne, IN 46845, designated by Tax Parcel Number 02-02-14-378-006.000-057, and legally described in Exhibit A attached hereto and incorporated by reference herein (the “Grantor Tract”);

WHEREAS, pursuant to Ind. Code § 29-1-7-23, the Heirs are the owners of certain real estate and improvements located in Allen County, Indiana, commonly known as 2707 Hursh Road, Fort Wayne, IN 46845, designated by Tax Parcel Number 02-02-14-378-007.000-057, and legally described in Exhibit B attached hereto and incorporated by reference herein (the “Grantee Tract”);

WHEREAS, the Heirs’ interest in the Grantee Tract is subject to the Personal Representative’s right of possession of the Grantee Tract for the purpose of administering the Decedent’s estate in accordance with Ind. Code § 29-1-7-23;

WHEREAS, there are certain improvements located on the Grantee Tract that overlap and encroach upon the Grantor Tract as further described herein (the “Encroaching Improvements”);

WHEREAS, Grantor has agreed to allow the Encroaching Improvements to remain on the Grantor Tract in their current locations in accordance with the terms and conditions of this Agreement;

WHEREAS, the Personal Representative and the Heirs desire to enter into this Encroachment Agreement for the benefit of the Grantee Tract.

NOW, THEREFORE, for and in consideration of Ten and 00/100 Dollars (\$10.00), and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Grantor and Grantee hereby agree as follows:

1. **Incorporation of Recitals.** The parties agree that the Recitals to this Agreement are true and correct, are material terms to this Agreement, and are fully incorporated by reference herein.

2. **Description of Encroaching Improvements.** The Encroaching Improvements consist of the following:

a. Overhang from the garage located in the Northwest corner of the Grantee Tract, which overlaps and encroaches upon the Grantor Tract by approximately 0.6 to 0.7 feet.

b. Fence extended from the garage on the Grantee Tract, which overlaps and encroaches upon the Grantor Tract by approximately 0.2 to 0.3 feet.

The Encroaching Improvements are generally depicted on Exhibit C attached hereto and incorporated by reference herein.

3. **Authorization of Encroaching Improvements.** Grantor agrees that the Encroaching Improvements may continue to overlap and encroach upon the Grantor Tract, to the same extent and in the same manner as the Encroaching Improvements now overlap and encroach, and Grantee, or Grantee's successors, heirs, and assigns, shall have the right to enter upon the Grantor Tract for the sole purpose of maintaining and repairing said Encroaching Improvements from time to time; provided, however, that (a) this Agreement shall remain in force and effect only so long as the present Encroaching Improvements shall remain; and (b) subject to Section 6 below, if for any reason either of the Encroaching Improvements is removed or destroyed by casualty or other hazard, the Encroaching Improvement so removed or destroyed, if replaced, will be located entirely within the Grantee Tract at the sole cost of the then-current owner of the Grantee Tract. Any damage caused to the Grantor Tract during the maintenance, removal or relocation of the Encroaching Improvements shall be restored by Grantee to the condition that existed immediately prior to such maintenance, removal or relocation at Grantee's sole cost.

4. **Acknowledgement of Boundary Line.** The presence of the Encroaching Improvements upon the Grantor Tract is in no way to be construed to establish the proper boundary between the Grantor Tract and the Grantee Tract or to create or vest any interest whatsoever in the owners of the Grantee Tract in the Grantor Tract other than the rights being granted herein, and in no way shall it divest the owner of the Grantor Tract of Grantor's fee simple title to said tract.

5. **Maintenance of Encroaching Improvements.** This Agreement only covers the Encroaching Improvements specifically described herein and existing as of the date of this

Agreement. While this Agreement is in effect, Grantee shall maintain the Encroaching Improvements in a clean, sightly, and workmanlike condition. No new improvements may be constructed on the Grantor Tract without Grantor's express written consent. Further, no additions or material modifications may be made to the Encroaching Improvements that would expand the scope of the overlap or encroachment upon the Grantor Tract without Grantor's express written consent. Nothing in this Section 5 shall be construed to prohibit Grantee from performing regular and routine maintenance of the Encroaching Improvements, which shall be permitted for as long as this Agreement remains in effect.

6. **Casualty Loss.** In the event of a casualty loss or other destruction of an Encroaching Improvement resulting in loss of 60% or more of its replacement value, the Encroaching Improvement so affected shall be removed from the Grantor Tract at Grantee's sole expense and the portion of the Grantor Tract where the Encroaching Improvement was located shall be restored to the condition that existed immediately prior to the removal. If Grantee elects to replace or reconstruct the Encroaching Improvement, the replacement or reconstructed improvement shall be located entirely within and upon the Grantee Tract.

7. **Limitation of Liability.** Except for damages resulting from the negligence or intentional acts of Grantor, Grantor shall have no liability for damages caused to the Encroaching Improvements on the Grantor Tract or as a result of Grantee's exercise of any rights under this Agreement, and Grantee expressly waives the right to pursue any and all such claims. Grantee, for itself and its guests, invitees, and all other persons claim by or through Grantee, forever waives, releases and discharges Grantor of and from any and all claims, actions, causes of action, damages or other relief, including, without limitation, injuries, disability, death, loss or damage to person or property or other liabilities (collectively, "Claims") whatsoever arising from or relating in any way to Grantee's entry onto the Grantor Tract as authorized under this Agreement and/or Grantee's use of the Encroaching Improvements, except for Claims arising as a result of the negligence or intentional acts of Grantor.

8. **Agreement to Run with the Land.** The interests, rights and obligations given or imposed upon the owners of the Grantor Tract and the Grantee Tract as described in this Agreement shall not be personal but shall run with the land for the benefit and burden of the parties hereto and their heirs, devisees, legatees, grantees, successors and assigns and of persons occupying or using said real estate under them. Either party may record this Agreement with the Office of the Recorder of Allen County, Indiana.

9. **Termination.** This Agreement shall terminate under the following circumstances: (i) upon the mutual written agreement of the then-current owners of the Grantor Tract and the Grantee Tract, in which case Grantee shall remove the Encroaching Improvements from the Grantor Tract, at Grantee's sole cost, within sixty (60) days following the date of the mutual termination; or (ii) removal of all of the Encroaching Improvements from the Grantor Tract whether such removal is voluntary or is required under the terms of this Agreement (e.g., in the case of a casualty event or other destruction resulting in loss of 60% or more of the replacement value of the Encroaching Improvements).

10. **Attorneys' Fees.** In the event of any action or proceeding brought by either party against the other under this Agreement, the prevailing party shall be entitled to recover all costs and expenses, including reasonable attorneys' fees.

11. **Choice of Law.** This Agreement will be governed by and construed in accordance with the laws of the State of Indiana. Venue for any disputes regarding the interpretation or enforcement of this Agreement shall be brought in the state or federal courts sitting in Allen County, Indiana.

12. **Counterpart Execution.** This Agreement may be executed simultaneously or in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

13. **Entire Agreement.** This Agreement contains the entire agreement of the parties with respect to the subject matter hereof, and all prior agreements, communications and negotiations between the parties, either verbal or written, are hereby merged into this Agreement. This Agreement may be terminated, modified, or amended only by a writing signed by Grantee and Grantor, and no agreement or consent of any other persons shall be necessary for such termination, modification, or amendment.

14. **Last Deeds of Record.** The most recent deed of record for the Grantor Tract was recorded in the Office of the Recorder of Allen County on May 16, 2012, as Document Number 2012026803. The most recent deed of record for the Grantee Tract was recorded in the Office of the Recorder of Allen County on September 16, 1974, as Document Number 74-21713.

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IN WITNESS WHEREOF, the parties have executed this Agreement this 17 day of Oct., 2025.

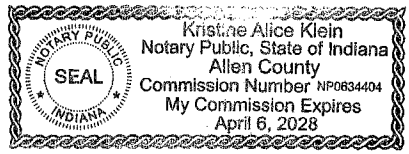
GRANTOR:

Roger D. Mitchell
Roger D. Mitchell

STATE OF INDIANA)
) SS
COUNTY OF ALLEN)

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared Roger D. Mitchell, an individual over the age of eighteen (18), who acknowledged his execution of the foregoing Encroachment Agreement to be his voluntary act and deed for the use and purposes set forth therein.

WITNESS my hand and notarial seal this 17th day of October, 2025.



Kristine Alice Klein
KRISTINE ALICE KLEIN Notary Public

My Commission Expires: _____
My County of Residence: _____
My Commission Number: _____

GRANTEE:

The Estate of Kenneth Gene Aikins, an Unsupervised Estate Pending under Cause No. 02D02-2507-EU-000376

By: Richard Wayne Harris PR.
Richard Wayne Harris, PR

STATE OF INDIANA)
) SS
COUNTY OF ALLEN)

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared Richard Wayne Harris, Personal Representative of the Estate of Kenneth Gene Aikins, an Unsupervised Estate Pending under Cause No. 02D02-2507-EU-000376, who acknowledged his execution of the foregoing Encroachment Agreement on behalf of said Estate as his voluntary act and deed for the use and purposes set forth therein.

WITNESS my hand and notarial seal this 1st day of October, 2025.

Michele M. Jandreau
_____, Notary Public

My Commission Expires: _____
My County of Residence: _____
My Commission Number: _____



MICHELE M JANDREAU, Notary Public
Allen County, State of Indiana
Commission Number NP0765961
My Commission Expires September 18, 2033

Patricia Louise Harris

Patricia Louise Harris

STATE OF INDIANA)
) SS
COUNTY OF ALLEN)

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared Patricia Louise Harris, an individual over the age of eighteen (18), who acknowledged her execution of the foregoing Encroachment Agreement as her voluntary act and deed for the use and purposes set forth therein.

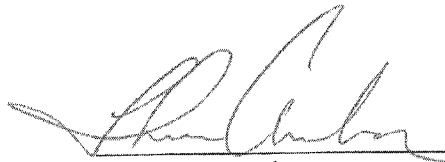
WITNESS my hand and notarial seal this 1st day of October, 2025.

Michele M. Jandreau
_____, Notary Public

My Commission Expires: _____
My County of Residence: _____
My Commission Number: _____



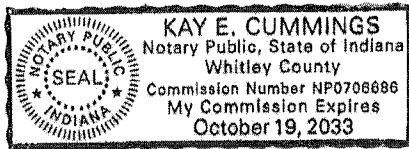
MICHELE M JANDREAU, Notary Public
Allen County, State of Indiana
Commission Number NP0765961
My Commission Expires September 18, 2033

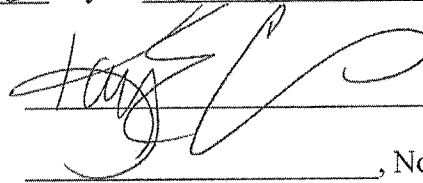

Theresa Aranda

STATE OF INDIANA)
) SS
COUNTY OF ALLEN)

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared Theresa Aranda, an individual over the age of eighteen (18), who acknowledged her execution of the foregoing Encroachment Agreement as her voluntary act and deed for the use and purposes set forth therein.

WITNESS my hand and notarial seal this 18th day of October, 2025.





Notary Public

My Commission Expires: _____
My County of Residence: _____
My Commission Number: _____

Robert G. Aikins

Robert G. Aikins

STATE OF INDIANA)
) SS
COUNTY OF ALLEN)

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared Robert G. Aikins, an individual over the age of eighteen (18), who acknowledged the execution of the foregoing Encroachment Agreement as his voluntary act and deed for the use and purposes set forth therein.

WITNESS my hand and notarial seal this 9th day of October, 2025.



MICHELE M JANDREAU, Notary Public
Allen County, State of Indiana
Commission Number NP0765961
My Commission Expires September 18, 2033

Michele M. Jandreau
_____, Notary Public

My Commission Expires: _____
My County of Residence: _____
My Commission Number: _____

THIS INSTRUMENT prepared by Brandon J. Almas, Attorney No. 29810-41, Barrett McNagny, LLP, 215 East Berry Street, Fort Wayne, Indiana 46802

I affirm under the penalties of perjury, that I have taken reasonable care to redact each Social Security Number in this document, unless required by law. Brandon J. Almas

When Recorded, mail to: Brandon J. Almas, Barrett McNagny, LLP, 215 E. Berry St., Fort Wayne, IN 46802

EXHIBIT "A"

Grantor Tract Legal Description

Lot Number 62 on the Plat of Tulleevin Lake, a Subdivision of part of the South half of the Southwest quarter of Section 14, and part of the Northwest Quarter of Section 23, Township 32 North, Range 12 East, in Allen County, Indiana, according to the plat thereof recorded in Plat Record 25, pages 33-34, in the Office of the Recorder of Allen County, Indiana.

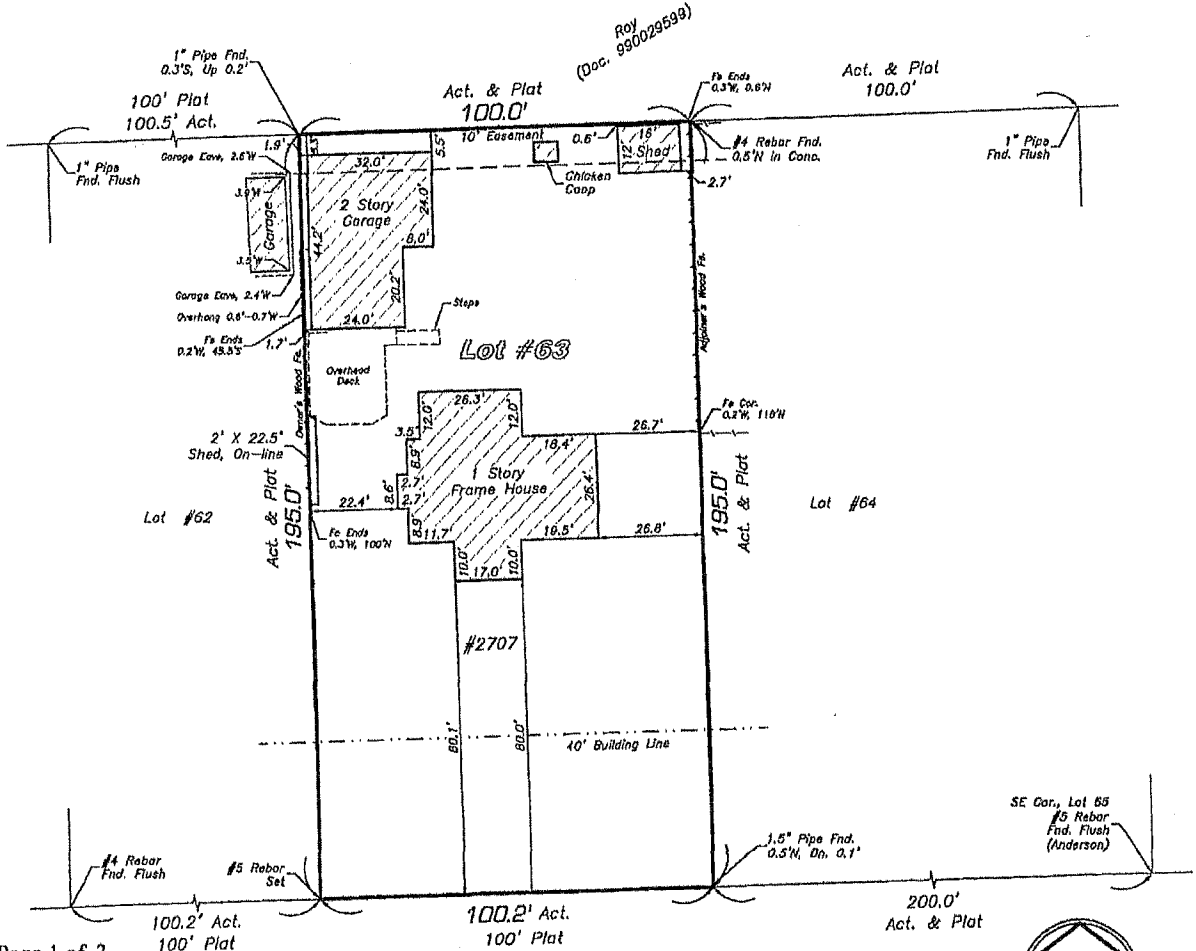
EXHIBIT "B"

Grantee Tract Legal Description

Lot Numbered 63 Tulleevin Lake Addition, Perry Township, Allen County, Indiana, according to the recorded plat thereof.

EXHIBIT "C"

Depiction of Encroachments



Page 1 of 3
 September 5, 2025
 Survey No. 153-153
 Aikins, Kenneth G.
 Last Deed of Record: Doc. 780034861
 Last Date of Fieldwork: August 12, 2025
 Pages 2 and 3 contain the Surveyor's Report

HURSH ROAD (50' R/W)



SCALE IN FEET:
0 20 40