

THE CORPORATION OF THE MUNICIPALITY OF MAGNETAWAN

BY-LAW NO. 2018 - 58

Being a By-law to enter into a license agreement to grant an encroachment over Municipally-owned lands between Highway 510 and CON B, PT LOT 97, RP 42R13389, PART 2, 86 Highway 510

WHEREAS Magnetawan By-law 2006-11 provides for Council to approve applications to license encroachments on Municipal road allowances;


AND WHEREAS the Municipality has received an application from Richard Spencer, Bonita Spencer, Dale Spencer, and Blair Spencer ("the Licensee") to license an encroachment over Municipally-owned lands for the purpose of providing access for residential purposes to the Licensee's lands, described as CON B, PT LOT 97, RP 42R13389, PART 2, 86 Highway 510.

NOW THEREFORE the Council of the Corporation Municipality of Magnetawan hereby enacts as follows:

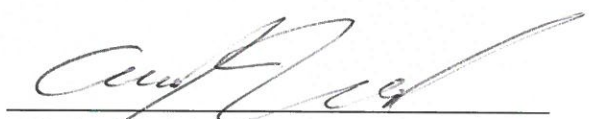
1. **THAT** the Corporation of the Municipality of Magnetawan is hereby authorized to enter into a license agreement with the Licensee to grant an encroachment over Municipally-owned lands, attached hereto as Schedule 'A' and forming part of this By-law;
2. **THAT** the Mayor and Clerk-Administrator are hereby authorized to execute the Agreement on behalf of the Corporation.

READ A FIRST, SECOND AND THIRD TIME, passed, signed and the Seal of the Corporation affixed hereto, this 22nd day of August, 2018.

**THE CORPORATION OF THE
MUNICIPALITY OF MAGNETAWAN**



Mayor



Clerk-Administrator

Council MTG. of Aug 22/18
Agenda Item # 8.2

SCHEDULE 'A' to
MAGNETAWAN BY-LAW 2018-58

"ACCESS DRIVEWAY LICENSE
CON B PT LOT 97 RP
42R13389 PART 2,
86 HIGHWAY 510"

THIS LICENSE AGREEMENT MADE BETWEEN:

THE CORPORATION OF THE MUNICIPALITY OF MAGNETAWAN

(hereinafter called the "Municipality")
OF THE FIRST PART

- and -

RICHARD SPENCER, BONITA SPENCER, DALE SPENCER, BLAIR SPENCER

(hereinafter jointly called the "Licensee")
OF THE SECOND PART

WHEREAS the Licensee is the registered owner of the lands and premises more particularly described in paragraph 1 of Schedule "A" attached hereto (the "Licensee's Lands");

AND WHEREAS the Licensee desires to gain access to the Licensee's Lands via an unopened road allowance under the Municipality's jurisdiction (the Municipality's Lands) which is described in Paragraph 2 of Schedule "A";

AND WHEREAS the Municipality has agreed to permit the Licensee to construct and maintain such driveway on a portion of the Municipality's Lands in the area described in Paragraph 3 of Schedule "A" (the Licensed Area) subject to the requirement that the Licensee enter into an agreement with the Municipality;

NOW THEREFORE THIS AGREEMENT WITNESSETH THAT IN CONSIDERATION OF THE PREMISES AND THE COVENANTS HEREINAFTER SET FORTH, AND OTHER GOOD AND VALUABLE CONSIDERATION, THE RECEIPT WHEREOF IS HEREBY ACKNOWLEDGED, THE PARTIES HERETO COVENANT AND AGREE WITH EACH OTHER AS FOLLOWS:

1. LICENCE

The Municipality hereby permits and consents to the Licensee to establish and maintain a driveway across the Licensed Area, which is more particularly described in Paragraph 2 of Schedule "A" for the purpose of providing access to the lands described in Paragraph 1 of Schedule "A".

This license is granted for the purpose of providing access for residential purposes to the Licensee's Lands.

2. INDEMNIFICATION FROM LIABILITY AND RELEASE

The Licensee covenants and agrees with the Municipality that the Licensee will indemnify and save harmless the Municipality, its officers, servants, officials and agents from any claim or demand, loss, cost, charge or expense which the Municipality may incur or be liable for in consequence of the permission hereinbefore granted and/or the exercise by the Licensee of such permission and/or the presence of the driveway or in any matter related thereto.

The Licensee hereby releases and forever discharges the Municipality, its officers, servants, officials and agents from any claim, demand, loss, cost, charge or expense which may arise as a result of the Municipality performing any municipal work in or upon the Licensed Area which may damage or interfere with the driveway.

3. TERM, FEE AND PROPERTY TAXES

- (a) Term - This Licence Agreement shall be effective upon the date of execution by the Municipality and shall continue from year to year subject to the termination provisions hereinafter set forth.
- (b) Annual Fee - The Licensee shall pay the applicable fee (as established by the Municipality's then applicant Fees and Charges By-law) on or before February 1st of each calendar year. Should such amount remain unpaid on the 2nd of February in each calendar year, the Municipality may add the amount owing to the Tax Roll of the Licensee's Lands.
- (c) Municipal Taxes - It is a condition of this license agreement that the Licensee shall maintain the property tax account for the Licensee's Lands in good standing. For the purposes of this agreement "in good standing" shall mean that all property taxes imposed upon the Licensee's Land for the then current tax year shall be paid in full no later than 1st of November of that tax year and if such property taxes are not in good standing the Licensee is deemed to be in default of this Agreement.

4. TERMINATION OF AGREEMENT

- (a) This Agreement may be terminated by the Municipality:
 - (1) Discretionary - upon six (6) months' notice in writing by the Municipality, with or without reason, to the Licensee at the Municipality's sole discretion; or
 - (2) Default - upon default of the Licensee of the terms of this agreement; as a condition precedent to giving such notice of termination the Municipality shall provide written notice of default and the Licensee shall have fifteen (15) days from the date of the notice to remedy the identified default(s) to the satisfaction of the Municipality; where such default has not been remedied the Municipality may, in addition any other remedies, terminate the agreement as of a date specified in writing and require the Licensee to remove the encroachment within a reasonable time and take such measures to restrict use of the Licensed Area as Council determines appropriate.
- (b) This Agreement will automatically terminate:
 - (1) upon the registration of a transfer of the ownership of the Licensed Area from the Municipality to the Licensee;
 - (2) upon the removal of the driveway and the restoration of the Licensed Area to a condition satisfactory to the Municipality.

5. NO INTEREST IN LAND AND NON-EXCLUSIVE LICENSE

- (a) The Licensee acknowledges that this Agreement shall in no way create any interest in land or easement rights.
- (b) The Licensee acknowledges and agrees that the Licensed Area remains a component of an unopened road allowance over which the public is entitled to travel. Accordingly the license granted herein is non-exclusive and the Licensee may not prohibit or interfere with the public travel along the unopened road allowance.

6. CONSTRUCT, REPAIR AND REMOVAL

- (a) In consideration of the permission and consent hereby given, the Licensee:
- (1) shall, at its own expense, construct and maintain the driveway within the Licensed Area;
 - (2) shall not pave or otherwise hard surface the driveway;
 - (3) shall, at its own expense, obtain all required governmental approvals for the construction of the driveway;
 - (4) shall, at its own expense, keep and maintain the driveway in a safe, good and proper repair and condition;
 - (5) shall, upon termination of this Agreement, forthwith remove the driveway and repair any damage caused thereby at the sole expense of the Licensee without being entitled to any compensation whatsoever.
- (b) The Licensee acknowledges that the authorization hereunder applies only to the Licensed Area and it is the Licensee's obligation to ensure that works authorized hereunder does not encroach upon abutting lands. The Licensee shall be responsible for obtaining the assistance of a professional surveyor for such purpose and the cost thereof.
- (c) In addition to any other remedy at law or hereunder, if the Licensee fails to maintain in the Licensed Area in a safe condition, or to repair or remove the driveway as required by this Agreement, the Municipality may alter, repair or remove the same at the expense of the Licensee and the Certificate of the Clerk of the Municipality as to the expense thereof shall be final and binding upon the Licensee, and the Municipality may recover the same from the Licensee in any court of competent jurisdiction as a debt due and owing to the Municipality.

7. INSURANCE CERTIFICATE AND POLICY

- (a) Policy of Insurance - The Licensee shall lodge with the Municipality, prior to the execution of the Agreement by the Municipality (and prior to February 1st each calendar year), an insurance certificate with an Insurance Company satisfactory to the Municipality, and insuring for the joint benefit of the Licensee and the Municipality against any liability that may arise out of authorization granted hereunder or any use of the Licensed Area.
- (b) Comprehensive General Liability - Such policy shall carry limits of liability in the amount to be specified by the Municipality, but in no event shall it be less than \$5,000,000.00 inclusive comprehensive general liability and such policy shall contain:
- (1) a cross-liability clause;
 - (2) product/completed operation coverage;
 - (3) shall not have an exclusion pertaining to blasting, provided that any blasting required to be done shall be done by an independent contractor duly qualified to do such work or where no blasting will occur, such clause may be included where the Municipality has received to its satisfaction, a Statutory Declaration from the Licensee that no blasting will occur on the lands subject to this agreement;
 - (4) shall include the following as an additional insured:
 - i) The Corporation of the Municipality of Magnetawan

- (5) Notice of Cancellation - a provision that the insurance company agrees to notify the Municipality 15 days in advance of any material change or cancellation of the said insurance policy.
- (c) Certificate of Coverage - Any certificate of coverage filed with the Municipal solicitor shall specifically contain confirmation that the coverage as specified in paragraphs (a), (b), (c), (d) and (e) above is in effect.
- (d) Confirmation of Premium Payment - The Licensee shall, from time to time as required by the Municipality, provide confirmation that all premiums on such policy or policies of insurance have been paid, and that the insurance is in full force and effect. The Licensee shall file a copy of the policy with the Municipality.
- (e) Claim in Excess of Policy Limits - The issuance of such Policy of Insurance shall not be construed as relieving the Licensee from responsibility for other or larger claims, if any, and for which it may be held responsible.

8. DEPOSITS

- (a) The Licensee shall lodge with the Municipality, as applicable, those cash deposits more particularly described in Schedule "B", prior to the date of execution of this Agreement by the Municipality.
- (b) Without limiting the generality of section 10, in the event any expenses incurred by the Municipality in the preparation and administration or enforcement of this agreement, exceeds the deposit, the Licensee shall pay such additional amounts to the Municipality as invoiced. Failure to pay such invoices within the time periods set out in this agreement or in the invoices shall be considered a default of this agreement.

9. EXPENSES TO BE PAID BY THE LICENSEE

- (a) Every provision of this Agreement by which the Licensee is obligated in any way shall be deemed to include the words "at the expense of the Licensee" unless the context otherwise requires.
- (b) The Licensee shall pay such reasonable fees as may be invoiced to the Municipality by its Solicitor, its Planner, and its Municipal Engineer in connection with all work to be performed as a result of the provisions of this Agreement.
- (c) All expenses for which demand for payment has been made by the Municipality, shall bear interest at the rate of 12% per annum commencing 30 days after demand is made.
- (d) In the event that the Municipality finds it is necessary to engage the services of an engineer or technical personnel not permanently employed by the Municipality to review the plans of the Licensee and/or carry out on-site inspections of the work performed, the Municipality will advise the Licensee accordingly of this need, and the costs of such outside engineers so engaged shall be the responsibility of the Licensee. The Municipality may require a deposit for this purpose.

10. LICENCE NON-TRANSFERABLE

The licence hereby granted may not be transferred by the Licensee without the prior consent in writing of the Municipality.

11. NOTICE

For the purpose of This Agreement, notice may be given to the Licensee by prepaid registered mail to the address shown on the last transfer registered against the Licensee's Lands and such notice shall be deemed to have been given and received on the fifth day after mailing.

12. ESTOPPEL OF LICENSEE

The Licensee agrees to not call into question directly or indirectly in any proceeding whatsoever, in law or in equity, or before any administrative tribunal, the right of the Municipality to enter into This Agreement and to enforce each and every term, covenant and condition herein contained and This Agreement may be pleaded as an estoppel against the Licensee in any such proceedings.

13. ERECTION OF WARNING SIGNS

(a) The Licensee shall erect signs at the approach of the unopened road allowance which read as follows:

"THIS UNOPENED ROAD ALLOWANCE HAS NOT BEEN ASSUMED FOR PUBLIC USE BY THE MUNICIPALITY. IT IS PRIVATELY MAINTAINED FOR ACCESS TO ABUTTING LANDS. MEMBERS OF THE PUBLIC MAY STILL USE THIS UNOPENED ROAD ALLOWANCE, BUT DO SO AT THEIR OWN RISK".

This AGREEMENT SHALL enure to the benefit of and be binding upon the parties hereto and their permitted assigns.

IN WITNESS WHEREOF the parties hereto have executed and set their hands and seals on This Agreement:

By the Municipality on the _____ day of _____, 2018.

THE CORPORATION OF THE MUNICIPALITY OF MAGNETAWAN

Per: _____
Sam Dunnett, Mayor

Per: _____
Andrew Farnsworth,
Clerk-Administrator

By the Licensee on the _____ day of _____, 2018.

THIS IS SCHEDULE A TO THE LICENSE AGREEMENT BETWEEN THE
CORPORATION OF THE MUNICIPALITY OF MAGNETAWAN

SCHEDULE "A"

1. Licensee's Lands

CON B PT LOT 97 RP 42R13389 PART 2, in the former Geographic Township of Chapman, now in the Municipality of Magnetawan, and municipally known as 86 Highway 510, Magnetawan.

2. Municipality's Lands

see email attachment

3. Licensed Area

See email attachment

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THIS IS SCHEDULE A TO THE LICENSE AGREEMENT BETWEEN THE CORPORATION OF THE MUNICIPALITY OF MAGNETAWAN

SCHEDULE "B"

CASH DEPOSITS AND SECURITY

The Licensee shall, on the dates specified herein, lodge with the Municipality, the following described cash deposits and security.

1. TYPE OF SECURITY

Any security required to be filed under this Agreement, shall be by Certified Cheque or Bank Draft in the amount or amounts hereinafter set out.

2. CASH DEPOSITS

The following cash deposits are estimates only and are to be paid to the Municipality, as applicable, prior to the execution of this Agreement by the Municipality. In the event that the actual costs incurred by the Municipality exceed the deposits, such excess shall be invoiced to the Licensee and be due and payable 30 days after demand.

For legal, planning and engineering expenses and disbursements in connection with this Agreement, a deposit of \$1,000.00

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