

THE CORPORATION OF THE MUNICIPALITY OF MAGNETAWAN

BY-LAW NO. 2020 - 14

**Being a By-law to enter into an easement agreement with Philip David Weddel
for the property at 4855 Highway 520**

WHEREAS Section 5(3) of the *Municipal Act, 2001, S.O. 2001, c.25*, as amended, requires a municipal Council to exercise a municipal power, including a municipality's capacity, rights, powers and privileges under Section 9, by by-law unless the municipality is specifically authorized to do otherwise;

AND WHEREAS, the Council of the Corporation of the Municipality of Magnetawan has entered into an agreement of Purchase and Sale with Philip David Weddel for the property known as 4855 Highway 520;

AND WHEREAS, Philip David Weddel requires access over Municipal lands to access the property;

NOW THEREFORE BE IT RESOLVED THAT the Council of the Corporation of the Municipality of Magnetawan enacts as follows:

1. **THAT** the Corporation of the Municipality of Magnetawan is hereby authorized to enter into an easement agreement with Philip David Weddel substantially as attached and;
2. **THAT** the Mayor and CAO/Clerk 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 12th day of February, 2020.

**THE CORPORATION OF THE
MUNICIPALITY OF MAGNETAWAN**



Mayor



CAO/Clerk

1. Grant of Easement

The Transferor does hereby grant and transfer unto the Transferee, its successors and assigns, a right and easement in, under and through the Tract, described as Part 2, Plan 42R-21335 for pedestrian and vehicular access along the existing driveway to and from the Transferee's Lands described as Part 1, Plan 42R-21335.

2. Rights of Ingress and Egress

Such right of access from, in and over the Tract includes and shall extend to the Transferee, its servants, agents, contractors, sub-contractors with or without vehicles, including tractor-trailers, machinery and equipment for all purpose, useful and convenient in connection with or incidental to the exercise and enjoyment of the right and easement herein granted and transferred as and from the date hereof and continuing in perpetuity.

3. Terms & Conditions

The aforesaid right and easement is hereby granted and transferred on the following terms:

(a) Rights and Obligations of Transferor

- (i) The Transferor shall undertake the following maintenance of the existing driveway located upon the Tract:
 - a. Grading of the gravelled surface twice annually;
 - b. Filling of significant potholes on an as needed basis;
 - c. Snow removal, which shall be conducted when the Municipality is conducting snow ploughing operations upon public highways under its jurisdiction and in the vicinity of the Tract.
- (ii) Notwithstanding subsection (i), the parties acknowledge and agree that the Tract is not a public highway and is not subject to section 44 of the *Municipal Act, 2001 as amended* nor to any half load restrictions enacted under authority of section 122 of the *Highway Traffic Act, R.S.O. 1990 as amended*.

(b) New Municipal Public Highway Connection with Provincial Highway 520

The Transferee acknowledges that the Transferor will be developing the remainder of the Transferor's Lands currently described in PIN 52084-0213(LT) and that as part of such development, the Transferor intends upon creating an internal public highway as part of the proposed development of its remaining lands as an "employment park". Such public highway will intersect with Provincial Highway 520 and provide access to the Transferee's Lands. Such public highway will be designed and constructed to a full municipal standard and would not require application of any half load restrictions under section 122 *Highway Traffic Act, R.S.O. 1990 as amended*.

The Transferee agrees that upon the establishment of the aforementioned internal public highway on the Transferor's Lands, and for which the Transferee shall not be apportioned any of the costs of such construction, the Transferee shall release the easement herein. Each party shall be responsible for its own costs in relation giving effect to such transfer.

(c) Conveyance of Tract

The Transferee acknowledges that the proposed development of the remaining lands as an "employment park" by the Municipality referenced in subsection (b) may be subject to modification and/or may not occur. The parties agree that should such proposed development not occur and/or

(i) Indemnification

The Transferee hereby releases and forever discharges the Transferor, its officers, servants, officials and agents from any claim, demand, loss, cost, charge or expense which may arise as a result of the Municipality undertaking the maintenance activities under subsection 3(a)(i) save and except for any such claim, demand, loss, cost, charge or expense arising from the gross negligence of the Transferor while conducting the maintenance activities.

The Transferee further releases and forever discharges the Transferor, its officers, servants, officials and agents from any claim, demand, loss, cost, charge or expense which may arise as a result of the Transferee's use and occupation of the Tract and/or as a result of any activity undertaken under subsection 3(c) herein.

4. Covenants Running With The Land

The right and easement herein granted and transferred, and the burden herein set forth, shall be of the same force and effect to all intents and purposes as a covenant running with the Tract.

5. Successors and Assigns

This Indenture, including all the covenants and conditions herein contained, shall extend to, be binding upon and enure to the benefit of each and all of the heirs, executors, administrators, successors-in-title, and assigns of the parties hereto respectively and wherever the singular or masculine is used in this Indenture, it shall be construed as if the plural or the feminine or the neuter, as the case may be, had been used, where the context or the Party or Parties hereto so require, and the rest of the sentence shall be construed as if the grammatical and terminological changes thereby rendered necessary had been made.