

THE MUNICIPAL CORPORATION OF NORTH ALGONA
WILBERFORCE TOWNSHIP

BY-LAW #2016 - 45

BEING A BY-LAW TO AUTHORIZE A PRIVATE ROAD AGREEMENT BETWEEN NORTH ALGONA WILBERFORCE TOWNSHIP AND FREDRICK THEILHEIMER & KATHLEEN EISNER THEILHEIMER AND TIMOTHY RICHARD SUMMERS.

WHEREAS Section 8 of the Municipal Act, 2001 provides the Municipality with the powers of a natural person and the authority to govern their affairs as they consider appropriate; and

WHEREAS the Council of the Corporation of North Algona Wilberforce Township deems it expedient to enter into a Private Road Agreement with Fredrick Theilheimer & Kathleen Eisner Theilheimer and Timothy Richard Summers;

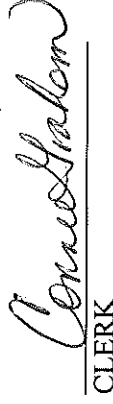
NOW THEREFORE the Council of the Corporation of North Algona Wilberforce Township enacts as follows:

1. THAT the Mayor and Clerk be and are hereby authorized to execute the attached Private Road Agreement with Fredrick Theilheimer & Kathleen Eisner Theilheimer and Timothy Richard Summers and to do or cause to be done all matters or act or anything to give full force and effect to this By-Law.
2. THAT the Agreement annexed hereto be made part of this By-Law.
3. THAT this By-Law shall come into force and effect immediately upon the passage therefore.

BE IT FUTHER ENACTED, that all By-Laws or parts thereof, and all or any resolutions of Council contrary thereto, or inconsistent herewith, be and the same are hereby repealed.

READ A FIRST AND SECOND TIME THIS 6th DAY OF SEPTEMBER, 2016.


MAYOR


CLERK

READ A THIRD TIME AND FINALLY PASSED 6th DAY of SEPTEMBER,
2016


MAYOR


CLERK

PRIVATE ROAD AGREEMENT

THIS AGREEMENT made as of the day of July, 2016

BETWEEN: **Frederick Theilheimer and Kathleen Eisner Theilheimer**

(hereinafter called the "Owners")

OF THE FIRST PART

-- and --

**THE CORPORATION OF NORTH
ALGONA WILBERFORCE TOWNSHIP**

(hereinafter called the "Township")

OF THE SECOND PART

-- and --

TIMOTHY RICHARD SUMMERS

(hereinafter called the "Summers")

OF THE THIRD PART

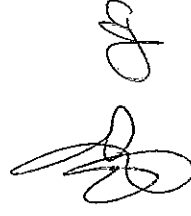
WITNESSES THAT WHEREAS:

1. Under its File No. B140/15 upon Application by the Owners, the Land Division Committee for the County of Renfrew gave its consent to the granting by the Owners to Summers of a right-of-way over the Owners' existing driveway for the benefit of Summers' adjacent property; and
2. It is a condition of the consent granted by the Land Division Committee that the parties enter into this Private Road Agreement; and
3. By virtue of Section 51(26) of the *Planning Act* (Ontario), a municipality may enter into agreements imposed as a condition of approval of a plan of subdivision or a provisional consent, and any such agreement may be registered against the land to which it applies, and the municipality or the approval authority, as the case may be, is entitled to enforce the provisions of it against the owner and, subject to the *Registry Act* and the *Land Titles Act*, any and all subsequent owners of the land; and
4. The Township deems it expedient and in the public interest that this Agreement be entered into,

NOW THEREFORE in consideration of the sum of One Dollar (\$1.00) of lawful money of Canada paid by each party to the other, the receipt and sufficiency whereof is hereby by each of them respectively acknowledged, and in further consideration of the mutual provisions and covenants hereinafter set forth, the parties hereto covenant and agree as follows:

Appendices:

1. The following appendices are annexed to and form part of this Agreement:
Appendix "A": Legal Description of that strip of the Owners' land which constitutes the private road.
Appendix "B": Legal Description of Summers' property to be accessed by the private road.



The Private Road:

1. The parties agree that the strip of land described in Appendix "A" hereto shall be used for the purposes of a private road right-of-way for ingress and egress to and from the Owners' Land and the Summers' property described in Appendix "B" hereto.
2. (a) The parties agree that the Private Road shall remain a private road and will not be assumed by the Township as a public road.
 (b) The Owners and Summers acknowledge that the Township is not now and will not in the future accept responsibility for maintenance of and repairs to the Private Road;
 (c) In the event that the Owners or Summers or any person entitled to use any part of the Private Road applies to have the Private Road incorporated into the Township's public roads system, the decision whether or not to accept a transfer of the Private Road shall be at the sole discretion of the Council of the Township at the time, and the Private Road will then be accepted only if it complies with the then existing road standards of the Township.
4. (d) Nothing in this Agreement shall be construed as an expression of an intention on the part of the Township at any time in the future to assume the Private Road or any part thereof as a public highway.

Road Standards:

3. The Owners agree to undertake at their cost any improvements to the Private Road described in Appendix "A" hereto that are deemed necessary by the Township Public Works Director or Fire Chief to enable proper access by emergency vehicles.

Release from Liability and Indemnity:

4. (a) The Owners and Summers acknowledge that the Township shall not be liable, and hereby release the Township from any liability, for any loss or damage occasioned by the existence or use of the Private Road, whether resulting from its construction, maintenance, non-repair or any other cause.
 (b) The Owners and Summers jointly and severally covenant and agree to indemnify and save the Township, its agents and employees, harmless of and from any and all claims, actions, damages, costs and expenses made or brought by any person, whether due to the inability of emergency vehicles to use the Private Road or otherwise.
 (c) The Owners agree to erect at their expense a sign or signs in such location(s) as may be indicated by the Road Superintendent of the Township from time to time, which sign(s) shall be a minimum of 2'x3' in size and shall be in black lettering on a white background and display the words "Private Driveway - Use at Own Risk".

Township's Expenses:

5. The Owners agree to reimburse the Township for all legal and planning fees and disbursements incurred by the Township in connection with the negotiation and execution of this Agreement promptly upon presentation of invoices for same, and all such invoices shall be paid within thirty days of the date thereof, and in the event of

non-payment within such period of time, shall bear interest calculated and compounded monthly at the rate of twelve percent (12%) per annum.

Registration of Agreement:

6. (a) The Owners hereby warrant to the Township that they are the registered owners, free of encumbrance, of the Owners' land more particularly described in Appendix "A" to this Agreement.
- (b) The Owners hereby agree to the municipality registering this Agreement at their expense promptly after its execution against the title to the Owners' land described in Appendix "A" and to Summers' property described in Appendix "B" to this Agreement in priority to any and all charges, liens and encumbrances.

Notices:

7. Any notice, request, demand or other communication required or permitted to be given under this Agreement by one party to the other shall be in writing and shall be sent by pre-paid first-class mail addressed to such other party as follows:

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|-------|---|
| (i) | To the Township:
The Corporation of the
North Algona Wilberforce Township
1091 Shaw Woods Rd
R R 1
Eganville, Ontario
K0J 1T0 |
| (ii) | To Owners:
581B Eady Road
Golden Lake, ON
K0J 1X0 |
| (iii) | To Summers:
581A Eady Road
Golden Lake, ON
K0J 1X0 |

or to such other address as may be given by any of them to the other in writing from time to time, and any such communication shall be deemed to have been received 72 hours after 12:01 a.m. on the day following the date of mailing thereof.

Interpretation:

8. (a) In this Agreement, words importing the singular number shall include the plural and vice versa, and words importing the masculine gender shall include the feminine gender, and words importing persons shall include corporations.
- (b) The agreements, covenants and undertakings of the Owners herein shall be joint and several.
- (c) This Agreement shall be binding upon the Owners and the survivor of them and upon Summers, and their respective successors in title to the Owners' land described in Appendix "B" hereto and any part or subdivision thereof and Summers' property described in Appendix "C" hereto to the intent and effect that the obligations imposed herein upon the Owners shall be a covenant which shall run with the title to Owners' land and every part or subdivision thereof, for the benefit of the Township in accordance with Section 51(26) of the Planning Act (Ontario).

