

REPORT TO COUNCIL



Date: October 26, 2011
File: 2390-20-023
To: City Manager
From: Manager, Property Management
Subject: Proposed Licence of Occupation over Dedicated Road Adjacent to 3810 Casorso Road

Report Prepared by: Ryan W. Smith, Property Officer

Recommendation:

THAT City Council approves the City entering into a five (5) year Licence of Occupation with SL140 Ventures Ltd., for a driveway and parking stalls on dedicated road adjacent to 3810 Casorso Road, in the form attached to the Report of the Manager, Property Management dated October 26, 2011;

AND THAT the Mayor and City Clerk be authorized to execute the Licence of Occupation;

AND FURTHER THAT the 2011 Financial Plan be amended accordingly.

Purpose:

To grant SL140 Ventures Ltd. a Licence of Occupation over the unconstructed roadway.

Background:

SL140 Ventures Ltd. wishes to have a driveway and parking stalls on the property located at 3810 Casorso Road which will create an encroachment onto dedicated roadway known as Casorso Road.

Financial/Budgetary Considerations:

The City is proposing a Licence of Occupation for the term of 5 years (until September 1, 2016) for the payment of \$100 per year.

Internal Circulation

Financial Planning Manager

Considerations not applicable to this report:

Legal/Statutory Authority:

Legal/Statutory Procedural Requirements:

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Existing Policy:
Personnel Implications:
External Agency/Public Comments:
Communications Comments:
Alternate Recommendation:

In light of the above, the Real Estate & Building Services Department request Council's support of this Licence of Occupation.

Submitted by:



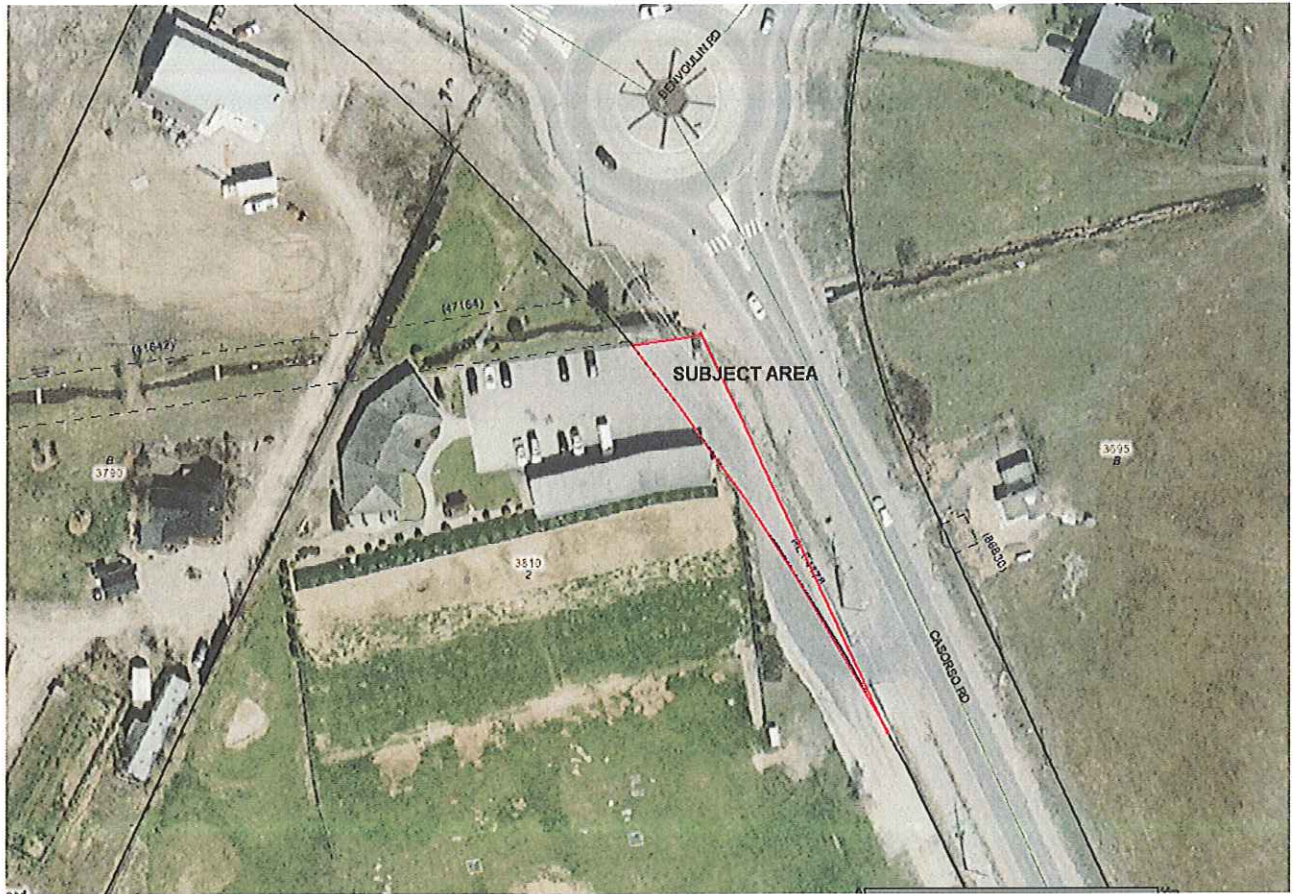
R. Forbes, Manager
Property Management

Approved for inclusion:



Martin Johansen, Manager, Building Services for
Doug Gilchrist, Director Real Estate & Building Services

cc: Director, Real Estate and Building Services
Director, Financial Services



LICENCE OF OCCUPATION

THIS AGREEMENT dated for reference the 16th day of September, 2011.

BETWEEN:

CITY OF KELOWNA, a municipal corporation having its
office at 1435 Water Street, Kelowna, BC., V1Y 1J4

(the "City")

AND:

OF THE FIRST PART

SL140 Ventures Ltd.
601 Barrera Road
Kelowna, BC, V1W 3C9

(the "Licensee")

OF THE SECOND PART

WHEREAS:

- A. The Licensee is the owner of the property located at 3810 Casorso Road in the City of Kelowna, legally known as:

Parcel Identifier 010-917-471
Lot 2, District Lot 168, O.D.Y.D., Plan 3034

(the "Property");

- B. The Licensee wishes to have a driveway and parking stalls on the Property (the "Works") which will create an encroachment onto dedicated roadway known as Casorso Road (the "Dedicated Road");

- C. The City is prepared to grant the Licensee a Licence of Occupation pursuant to Section 35(11) of the *Community Charter*, S.B.C. 2003, c.26 for a term of 5 years until September 1, 2016 over a portion of the Dedicated Road to enable the Licensee to use the Works.

NOW THEREFORE in consideration of the payment of One Hundred (\$100) Dollars per year, and other good and valuable consideration, from the Licensee to the City, the receipt and sufficiency of which are hereby acknowledged, the City and the Licensee covenant and agree as follows:

1. **Grant** – The City grants to the Licensee the non-exclusive right and licence to enter onto and use that portion of the Dedicated Road shown highlighted in yellow on Schedule “A” which is attached hereto (the “Licence Area”) for the purposes of driveway and parking stalls.
2. **Additional Rights** – For the purposes outlined in Section 1, the Licensee shall have the right to bring onto the Licence Area all necessary materials, vehicles, machinery and equipment.
3. **Term** – The duration of this Agreement and Licence herein granted shall be for a term of 5 years commencing on the date of execution of this Agreement and terminating September 1, 2016, unless earlier terminated in accordance with Section 17 and 25.
4. **Extension** – The term of this Licence of Occupation may be renewed for a further 5 year period (the “Renewal Period”) upon written agreement by the City and the Licensee. Compensation to the City by the Licensee for the Renewal Period shall be an amount equal to the fee simple value of the Licence Area based on the current year property assessment.
5. **State of Licence Area at Termination** – In the event that this Agreement terminates or expires for any reason, the Licensee will cease all occupation of the Licence Area and will remove all equipment, chattels, fixtures, buildings and other improvements, including the driveway and parking stalls from the Licence Area. The Licensee will leave the Licence Area in a safe, clean and tidy condition and clear of contamination occurring since the date of commencement of this Agreement. In the event that the Licensee fails to remove any equipment or chattels upon termination of this Agreement then the City may do so and recover the expense thereof from the Licensee. All buildings, improvements and fixtures remaining on the Licence Area become the sole property of the City upon termination of this Agreement, without any compensation whatsoever to the Licensee.
6. **Non-exclusive Use** – The Licensee agrees that:
 - (a) the rights granted under this Agreement do not constitute any interest in the Licence Area or entitle the Licensee to exclusive possession of the Licence Area;
 - (b) the Licensee’s rights under this Agreement are at all times subject to the rights and interest of the City as owner and possessor of the Licence Area.
7. **No Waste or Nuisance** – The Licensee will not do or permit anything that may become a nuisance to occupiers or invitees on adjoining lands.
8. **Terms and Conditions** – The Licensee will comply with all the terms, conditions, rules or regulations that the City may from time to time impose in respect of the use and administration of the Licence Area. The Licensee acknowledges that the fact that the Licence is granted by the City does not excuse the Licensee from obtaining building permits, development permits, business licences and other required permissions.

9. **Maintenance** – The Licensee will at its own expense keep the Licence Area in a safe, clean and tidy condition, and will erect boarding and fencing around the Licence Area prior to any construction.
10. **Compliance with Laws** – The Licensee will comply with all laws and regulations pertaining to its use and occupation of the Licence Area.
11. **Inspection by the City** – The City may review and inspect the Licence Area and the work which the Licensee is undertaking pursuant to this Agreement to determine if the Licensee is in compliance with the terms of this Agreement.
12. **No Transfer** – The rights granted to the Licensee under this Agreement may not be sub-licensed, assigned or otherwise transferred.
13. **Risk** – The Licensee accepts the Licence Area on an as-is basis and agrees that it will use the Licence Area at its own risk, and the City will not be liable in respect of any loss of life, personal injury, damage to property, loss of property or other loss or damage suffered by the Licensee, its contractors, subcontractors, agents, invitees, employees or any other person arising out of this Agreement or the use and occupation of the Licence Area except in the case of negligence or wilful act or omission by the City, its employees, agents or invitees.
14. **Indemnity** – The Licensee will indemnify and save harmless the City and its elected and appointed officials, officers, employees, agents and others from and against any claim, action, damage, liability, cost and expense in connection with loss of life, personal injury, loss of property, damage to property or other loss or damage arising from this Licence or any occurrence on or around the Licence Area during the term of this Licence, or by use or occupancy of the Licence Area by the Licensee or any default of the Licensee under this Agreement or any wrongful act, omission or negligence of the Licensee or its officers, employees, contractors, agents or others for whom the Licensee is responsible. This indemnity will survive the expiry or sooner termination of this Agreement.
15. **Release** – The Licensee hereby releases and forever discharges the City, its elected officials, officers, employees, agents and invitees, of and from any claim, causes of action, suit, demand, expense, cost, legal fees and compensation of whatever kind, whether known or unknown, at law or in equity, including without limitation any claim under the *Property Law Act* (collectively “Claims”), which the Licensee may have, sustain or suffer, as the case may be, now or in the future arising from the Works, other improvements in the Licence Area, the expiry or termination of this Licence, the exercise by the City of any of its rights under this Licence or from or in any way connected with the Licensee’s use of the Licence Area, except claims arising from the exclusive negligence of the City.
16. **Insurance** – During the term of this Agreement, the Licensee will carry public liability insurance, in a form and with an insurer acceptable to the City, insuring the Licensee and the City under this Agreement in an amount not less than \$5,000,000.00 per occurrence, and any other type of insurance that the City may reasonably require. The Licensee will provide the City with proof of insurance at the time of execution of this Agreement and at other times upon request.
17. **Termination** – The City reserves the right to terminate this Agreement if the Licensee breaches any of its obligations under this Agreement and fails to remedy the breach with

thirty (30) business days of receiving written notice from the City. The City will not be liable to compensate the Licensee for damages, costs or losses resulting from the exercise of this right of termination or any termination of this Licence.

18. **Notices** – Any notice given pursuant to this Agreement will be sufficiently given if it is in writing and delivered by hand or mailed by prepaid registered mail or sent by facsimile transmission to the intended party at its address set out on page 1 of this Agreement or to such other address as either party may provide in writing to the other pursuant to the provisions of this paragraph.

All notices to the City must be marked to the attention of the City Clerk.


A notice will be deemed to be received on the day it is delivered, if delivered by hand, on the day of transmission, if sent by facsimile, or 3 days after the date it was mailed or if that day is not a business day, the next day that is a business day. If mailed, should there be at the time of mailing or between the time of mailing and the deemed receipt of the notice, a mail strike or slowdown, labour or other dispute which might affect the delivery of such notice by the mails, then such notice will only be effective if delivered by hand or sent by facsimile transmission.

19. **No Effect on Laws or Powers** – Nothing contained or implied herein prejudices or affects the City's rights and powers in the exercise of its functions pursuant to the *Local Government Act* or its rights and powers under any enactment to the extent the same are applicable to the Licence Area, all of which may be fully and effectively exercised in relation to the Licence Area as if this Agreement had not been fully executed and delivered.
20. **Severance** – If any portion of this Agreement is held invalid by a Court of competent jurisdiction, the invalid portion shall be severed and the decision that it is invalid must not affect the validity of the remainder of the Agreement.
21. **Further Actions** – Each of the parties hereto shall from time to time hereafter and upon any reasonable request of the other, execute and deliver, make or cause to be made all such further acts, deeds, assurances and things as may be required or necessary to more effectually implement and carry out the true intent and meaning of this Agreement.
22. **Waiver or Non-action** – Waiver by the City of any breach of any term, covenant or condition of this Agreement by the Licensee must not be deemed to be a waiver of any subsequent default by the Licensee. Failure by the City to take any action in respect of any breach of any term, covenant or condition of this Agreement by the Licensee must not be deemed to be a waiver of such term, covenant or condition.
23. **Reference** – Every reference to a party is deemed to include the heirs, executors, administrators, successors, servants, employees, agents, contractors and officers of such party wherever the context so requires or allows.
24. **General** –
- (a) This Agreement will bind and benefit each party to this Agreement, and its respective corporate successors;
 - (b) The Schedules attached to this Agreement form part of this Agreement;

- (c) This Agreement constitutes the entire agreement between the parties and may not be amended except by agreement in writing signed by all parties to this Agreement;
- (d) Time is of the essence of this Agreement;
- (e) This Agreement must be construed according to the laws of the Province of British Columbia.
- (f) This Agreement is subject to approval by the City of Kelowna Council.

As evidence of their agreement to be bound by the above terms and conditions, the parties have executed this Agreement below on the dates written below.

SIGNED, SEALED & DELIVERED by the)
CITY OF KELOWNA, in the presence of:)


 Signature of Witness)

RICK BAILEY
 Print Name)

13187 CLIFFSTONE COURT,
 Address LAKE COUNTRY, BC)


CLUB FITTER / BUILDER
 Occupation)
 *As to both signatures)

CITY OF KELOWNA by its authorized signatories:

 Mayor

 City Clerk

SIGNED, SEALED & DELIVERED by)
SL140 Ventures Ltd., in the presence of:)

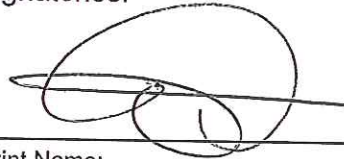

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 Address LAKE COUNTRY BC)

CLUB FITTER / BUILDER
 Occupation)
 *As to both signatures)

SL140 Ventures Ltd. by its authorized signatories:


 Print Name: _____

R.D. ANDERSON
 Print Name: _____

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 Mayor

 City Clerk

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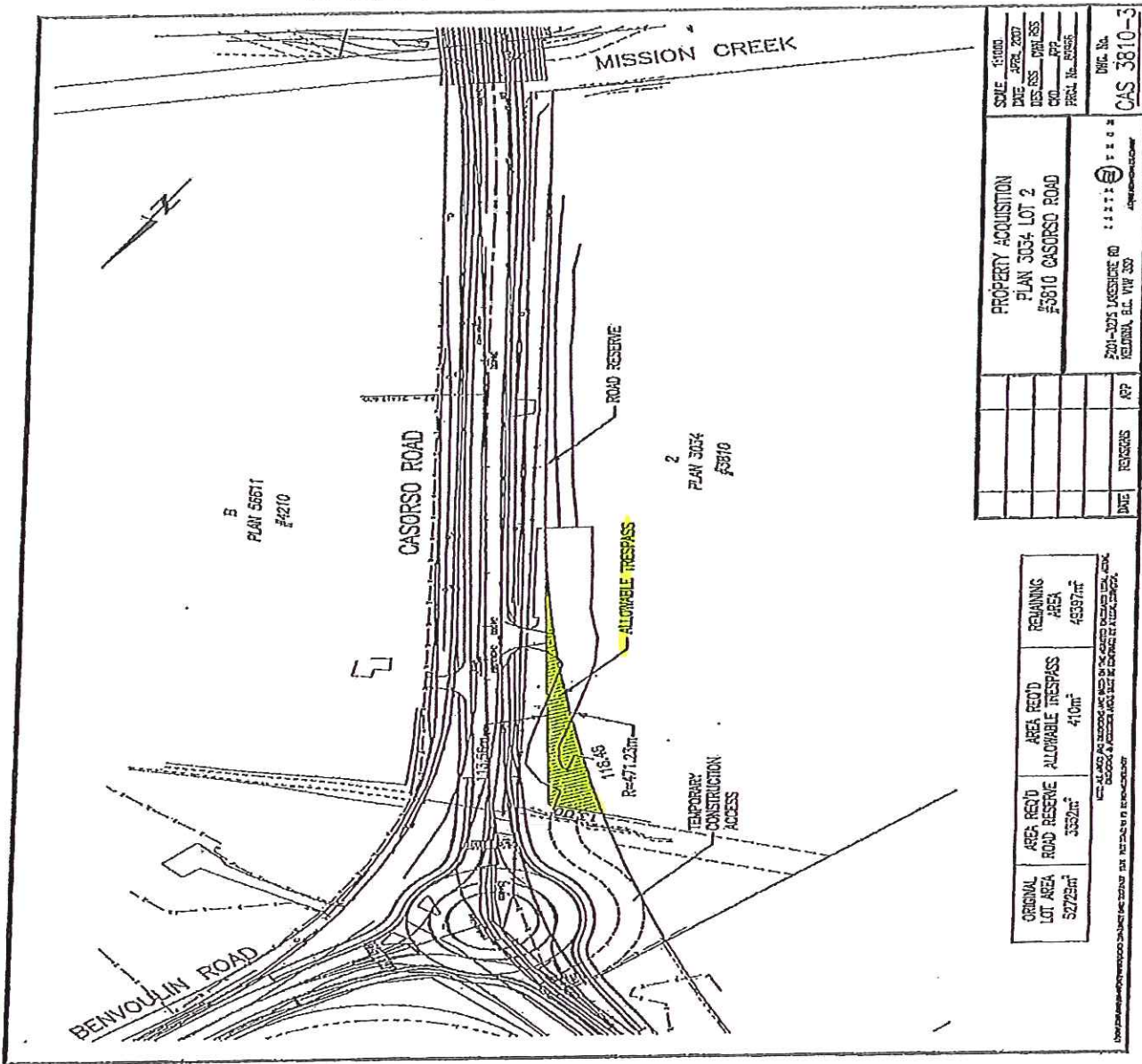
SL140 Ventures Ltd. by its authorized
 signatories:

 Print Name:

 Print Name:

Schedule "A"

SCHEDULE A



SCALE	1:1000
DATE	APRIL 2007
DISTRICT	DPH 155
CITY	APF
PERM. NO.	87556
DATE	
REVISIONS	APF
DATE	

PROPERTY ACQUISITION	PLAN 3064 LOT 2
	#3610 CASORSO ROAD
201-203 LAKESHORE RD VELDONIA, B.C. V1P 3S9	
DATE	
REVISIONS	APF
DATE	

ORIGINAL LOT AREA	52725m ²	AREA REQ'D ROAD RESERVE	3332m ²	AREA REQ'D ALLOWABLE TRESPASS	410m ²	REMAINING AREA	48987m ²
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THIS PLAN AND ANY INFORMATION HEREON IS FOR INFORMATION ONLY AND DOES NOT CONSTITUTE A CONTRACT OR A GUARANTEE OF ANY KIND.

DWG. No. CAS 3810-3