

Corporation of the Municipality of West Grey

By-law Number 11 – 2017

Being a By-law to authorize the Mayor and CAO/Deputy Clerk to enter into a Development Agreement between the Municipality of West Grey and 861467 Ontario Inc.;

Whereas the Council of the Municipality of West Grey deems it necessary and in the public interest to enter into a Development Agreement with the aforementioned property owner, being the owner of the property described as PART LOTS 30 AND 31, CONCESSION 10, GEOGRAPHIC TOWNSHIP OF NORMANBY, MUNICIPALITY OF WEST GREY, as in R407509 now being PIN 37296—0089 (LT);

Now therefore the Council of the Corporation of the Municipality of West Grey hereby enacts as follows:

1. **That** the Mayor and CAO/Deputy Clerk are hereby authorized to sign a Development Agreement with 861467 Ontario Inc., a copy of which is attached hereto as Schedule "A", and is hereby declared to form part of this by-law.

2. **That** this by-law shall come into force and take effect on the date of its final passing.

* * * * *

Read a first and second time this 6th day of February, 2017.
Read a third time and finally passed this 6th day of February, 2017.

Kevin Eccles, Mayor

Larry Adams, CAO/Deputy Clerk

SCHEDULE "A" TO BY-LAW NUMBER 11-2017

Municipality of



861467 Ontario Inc. (Dan Clark)
Gravel Pit
Development Agreement

Development Agreement

Between

861467 Ontario Inc.

(Hereinafter referred to as the "Owner")
Being the Party of the FIRST PART

-And-

The Corporation of the Municipality of West Grey

(Hereinafter referred to as the "Municipality")
Being the Party of the SECOND PART

-And-

Royal Bank of Canada

(Hereinafter referred to as the "Bank")
Being the Party of the THIRD PART

This agreement made in quadruplicate this 6th day of February, 2017.

Whereas the parcel affected by this Agreement is more particularly described as being PART LOTS 30 AND 31, CONCESSION 10, GEOGRAPHIC TOWNSHIP OF NORMANBY, MUNICIPALITY OF WEST GREY, as in R407509 now being PIN 37296—0089 (LT), (the "Subject Lands");

And whereas the *Planning Act* under Section 41(7)(c) enables a local municipality to require the owner to enter into one or more agreements;

And whereas the Municipality of West Grey also deems it necessary for the Owner to enter into a Development Agreement with the Municipality;

And whereas the Bank holds a first charge/mortgage on the Subject Lands;

Now therefore this Agreement witnesseth that in consideration of the mutual covenants hereinafter contained, the parties hereto hereby covenant and agree as follows:

1. Covenants By The Owner

The Owner covenants and agrees as follows:

- a) The Owner is the registered owner of the subject lands described herein.
- b) Upon application to the Municipality for the preparation of this Agreement, the Owner shall deposit with the Municipality the sum of Five Thousand Dollars (\$5,000.00). The Owner agrees to pay the Municipality the cost of the Municipality's Planner, Lawyer and Engineer for all costs involved in the processing of the Development Agreement, for checking of Plans and specifications, and for supervision and inspection on behalf of the Municipality. As accounts are received from the Municipality's Planner, Lawyer and Engineer, they will be paid by the Municipality and then submitted to the Owner for reimbursement, so that the \$5,000.00 initial deposit will again be built up to enable the Municipality to pay the next accounts as they are received.

- c) This Agreement shall be registered against title to these subject lands, at the expense of the Owner, and shall take priority over any subsequent registrations against the title to the subject lands.
- d) That this Agreement shall be binding on the Owner and from time to time, its successors and assigns, including, without limitation, any subsequent chargee/mortgagee;
- e) The Owner shall obtain all necessary approvals to carry on an aggregate extraction operation on the Subject Lands from the Municipality and from all Ministries and Agencies. Such approval shall include the approval of an Entrance Permit from the County of Grey and the installation of the Entrance in accordance with the Permit.
- f) That all operations on the Subject Lands will occur in accordance with the Class 'A' Aggregate License, and the following plans:

Existing Features (December 22, 2016)
Operational Plan (December 22, 2016)
Rehabilitation Plan (December 22, 2016)

All as prepared by Robert Gibson Consulting Services Inc., all as annexed hereto as Schedules "B", "C" and "D", respectively.

- g) Hours of operation are from 7 am to 6 pm, Monday through Friday, excepting however that:
 - i. No operations, including loading and shipping, shall occur beyond 4:00 p.m. on the Friday associated with the weekends of: Victoria Day; Canada Day (when it falls on Friday, Saturday, Sunday or Monday); Civic Holiday (first Monday in August); Labour Day; or, Thanksgiving.
 - ii. No operations, including loading and shipping, shall occur on: Victoria Day, Canada Day, Civic Holiday (first Monday in August); Labour Day; or Thanksgiving.
 - iii. Loading and shipping for local deliveries only may occur on Saturdays between 8:00 a.m. and 12:00 p.m. Larger shipping deliveries associated with public road projects may also be permitted within these same hours where written consent has been provided by the Director of Infrastructure for the Municipality of West Grey, with such consent stipulating the specific project and the specific Saturdays to which such special permission is being granted.
 - iv. Crushing shall only occur during the spring and fall, specifically before 4:00 p.m. on the Friday of the Victoria Day weekend and after 7:00 a.m. on the Tuesday following the Labour Day weekend and not in between those times and dates. Crushing may also be permitted during other times of the construction season where written consent has been provided by the Director of Infrastructure for the Municipality of West Grey, with such consent stipulating the specific days to which such special permission is being granted.
- h) An asphalt plant, a concrete plant and the storage of recyclable asphalt and concrete shall not be permitted on the subject lands.
- i) The maximum amount of disturbed land at any given time shall be limited to six (6) hectares.

- j) That access to and from the licensed site shall only occur directly to and from County Road 9.
- k) The Owner covenants and agrees with the Municipality on behalf of itself, its successors and assignees, to indemnify and save harmless the Municipality, its servants and agents from and against any and all actions, suits, claims and demands whatsoever, which may arise either directly or indirectly by reason of any work performed by the Owner. The Owner further covenants and agrees to release and forever discharge the Municipality from and against all claims, demands, causes of actions, of every nature and type whatsoever that may arise either as a result of the failure of the Municipality to carry out any of its obligations under this Agreement, or as a result of the Municipality performing any municipal work on the Subject Lands or the adjacent properties which may damage or interfere with the works of the Owner.
- l) The Owner agrees that this Agreement shall become null and void if the Municipality fails to pass the zoning by-law amendment on the Subject Lands to allow the extraction of aggregate, on or before the 31st day of March, 2017.

2. Covenants By The Municipality

The Municipality covenants and agrees as follows:

- a) That the Municipality agrees that subject to compliance by the Owner with all relevant Municipal By-laws, Provincial Statutes and Regulations, Agency requirements, and the provisions of this Agreement, the Owner may proceed to extract aggregate on the Subject Lands. This Agreement, however, shall become null and void if the Municipality fails to pass the zoning by-law amendment on the subject property to allow the extraction of aggregate, as provided in paragraph 1(l) herein.
- b) That the Municipality acknowledges Section 66(1), (2), (3) of the *Aggregate Resources Act*, R.S.O. 1990 c. A.8. The Municipality agrees that, in the event of a conflict between this Agreement and the Act, the Act will prevail and the Municipality will not take any punitive action against the Owner under such circumstances.
- c) That this Agreement shall be binding on the Municipality and its successors and assigns.

3. Accuracy of Plans and Other Matters

The Owner warrants that all plans and diagrams attached to this Agreement as Schedules or otherwise referred to in this Agreement are accurate as to all dimensions and other matters shown thereon. In the event that any material misrepresentation, whether accidental or otherwise is found to exist and which on reasonable grounds has prejudiced or compromised the Municipality's position, then the Owner shall be required, at its expense, to resolve all matters to the reasonable satisfaction of the Municipality. Failing this, the Municipality shall be entitled to otherwise address the issue or rectify the situation in such manner as the Municipality, in its sole discretion, deems appropriate, at the Owner's expense. For the above reasons, the Owner acknowledges the importance of having reliable and accurate plans and that the Municipality is relying upon them and is entering into this Agreement on that basis.

4. Notice

Any notice required or permitted to be given pursuant to the provisions of this Agreement may be given personally or shall be mailed to each party at the address hereinafter set out. If mailed by ordinary, prepaid first class post, it shall be deemed to have been received on the fourth day after it is postmarked.

To the Owner at: 861467 Ontario Inc.
c/o Dan Clark
9206 Wellington Road 14
R.R. 4
Kenilworth, Ontario N0G 2E0

To Municipality: Municipality of West Grey
Larry Adams, C.A.O./Deputy Clerk
402813 Grey Road No. 4
R.R. No 2
Durham, ONTARIO N0G 1R0

To the Bank: Royal Bank of Canada
180 Wellington Street West
Toronto ON M5J 1J1

5. Enforceability of Agreement

It is understood and agreed that the Owner shall 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 Owner by the Municipality in any such proceeding.

6. Registration

The Owner hereby agrees that this Agreement shall be registered on the title of the lands described in this Agreement at the expense of the Owner and shall be binding on the successors and assigns of the Owner. As provided in Section 1(b), the Owner agrees to pay the Municipality's reasonable legal costs incurred by it in connection with the preparation and registration of this Agreement. Schedules "A", "B", "C" and "D" are attached hereto and form part of this Agreement.

7. Consent of Bank

The Bank consents to the registration of this Agreement and agrees that in the event that the Bank exercises its rights and remedies against the Owner under the terms of its charge/mortgage registered against the Subject Lands, then the Bank shall be bound by the terms of this Agreement, which shall also bind any subsequent buyer of the Subject Lands.

In witness whereof the parties hereto have executed this Agreement and have hereunto caused to be affixed the corporate seals, duly attested to by the proper signing officers.

Signed, sealed and delivered this day of January, 2017.

In witness thereof the parties hereto have executed this Agreement.

Signed, sealed and delivered
in the presence of

) **841467 Ontario Inc.**
)
) Per: _____
) Dan Clark, President
) I have authority to bind the Corporation.

The Corporation of the Municipality of West Grey
)
) Per: _____
) Kevin Eccles
) Mayor
)
) Per _____
) Larry C. Adams
) CAO/Deputy Clerk
) We have authority to bind the Corporation

Royal Bank of Canada
)
) Per: _____
) Jenna Whytock, Account Manager
) I have authority to bind the Corporation

Schedule "A" to By-law Number 11 - 2017

Description of Lands

In the Municipality of West Grey (formerly in the Township of Bentinck)
being composed of:

PART LOTS 30 AND 31, CONCESSION 10, GEOGRAPHIC TOWNSHIP OF
NORMANBY, MUNICIPALITY OF WEST GREY, as in R407509 now being PIN
37296—0089 (LT), (the "Subject Lands");

Also identified as: 42-05-010-002-105000000

Schedule "B" to By-law Number 11 – 2017

**Existing Features Plan
(December 22, 2016)**

**The Existing Features Plan
dated December 22, 2016
is contained within the property file at the
Municipal Office of the Municipality of West Grey.**

Schedule "C" to By-law Number 11 - 2017

**Operational Plan
(December 22, 2016)**

**The Operational Plan
dated December 22, 2016
is contained within the property file at the
Municipal Office of the Municipality of West Grey.**

Schedule "D" to By-law Number 11 - 2017

**Progressive Rehabilitation and Final Rehabilitation Plans
(December 22, 2016)**

**The Rehabilitation Plan
dated December 22, 2016
is contained within the property file at the
Municipal Office of the Municipality of West Grey.**