

**The Corporation of the Municipality of West Grey**

**By-law Number 44 - 2017**

**BEING** a By-law to authorize the Mayor and CAO/Deputy Clerk to enter into an Agreement between David Chapman’s Ice Cream Limited, the Corporation of the Municipality of Grey Highlands, and the Corporation of the Municipality of West Grey;

**WHEREAS** the Council of the Municipality of West Grey deems it necessary in the public interest to enter into an Agreement between David Chapman’s Ice Cream Limited, the Corporation of the Municipality of Grey Highlands, and the Corporation of the Municipality of West Grey.

**NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE MUNICIPALITY OF WEST GREY ENACTS AS FOLLOWS:**

1. **THAT** the Mayor and CAO/Deputy Clerk are hereby authorized to sign an Agreement between David Chapman’s Ice Cream Limited, the Corporation of the Municipality of Grey Highlands, and the Corporation of the Municipality of West Grey, 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 17<sup>th</sup> day of April, 2017.

Read a third time and finally passed this 17<sup>th</sup> day of April, 2017.

\_\_\_\_\_  
(Signed)  
Kevin Eccles, Mayor

\_\_\_\_\_  
(Signed)  
Larry C. Adams, CAO/Deputy Clerk

**Schedule "A" to By-law Number 44 - 2017**

**MUNICIPALITY OF**



**DAVID CHAPMAN'S ICE CREAM  
LIMITED/MUNICIPALITY OF GREY HIGHLANDS  
GREEMENT**

THIS AGREEMENT made this \_\_\_\_ day of \_\_\_\_\_, 2017

BETWEEN:

**DAVID CHAPMAN'S ICE CREAM LIMITED**  
("Chapman's")

OF THE FIRST PART

-and-

**THE CORPORATION OF THE MUNICIPALITY OF GREY HIGHLANDS**  
("Grey Highlands")

OF THE SECOND PART

-and-

**THE CORPORATION OF THE MUNICIPALITY OF WEST GREY**  
("West Grey")

OF THE THIRD PART

**WHEREAS** Chapman's is the owner of the lands, legally described as PT LT 98-99 CON 1 SWTSR GLENELG PT 2-15- 16R7326, 1-4 16R7902; S/T GS139834; SUBJECT TO AN EASEMENT IN GROSS OVER PT 1-3 16R9964 AS IN GY40835; in the Municipality of Grey Highlands, in the County of Grey, being all of Property Identification Number 37235-0408 (LT) ("the Chapman's Ice Cream Property");

**AND WHEREAS** Chapman's is also the owner of the lands legally described as PT LT 94-97, CON 1, SWTSR GLENELG as in R405449 NE of R492288 (PORTIONS 15-17) & PT 1 16R7370; T/W R405449; S/T GS59357E (PARTIALLY RELEASED BY GY118592 AS TO PART 5 PLAN GS59357E); in the Municipality of West Grey; SUBJECT TO AN EASEMENT OVER PART OF LOTS 94 & 95 CON 1 SWTSR GLENELG PARTS 1 & 2 16R10684 IN FAVOUR OF PT LTS 93-97 CON 1 SWTSR GLENELG AS IN R416479 (PCL 1 & 2 SCHEDULE A); in the Municipality of West Grey AS IN GY118588, in the County of Grey, being all of Property Identification Number 37235-0367 (LT) ("the Expansion Property");;

**AND WHEREAS** Chapman's is constructing an addition to the north of one of the existing buildings known as the Phoenix Building on the Chapman's Ice Cream Property;

**AND WHEREAS** the *Building Code, O Reg 332/12*, Table 9.10.14.5, forming part of Sentences 9.10.14.5(1) to (3) requires any wall adjacent to the property line to be constructed with a minimum one hour fire-resistance rating;

**AND WHEREAS** the addition being constructed on the Chapman's Ice Cream Property does not meet the limiting distance for an exposing building face that is required to give a one hour fire resistance rating if measured to the property line;

**AND WHEREAS** Division B-Part 9, Sentence 9.10.14.2(4) of the *Building Code* provides as follows:

(4) *The required limiting distance for an exposing building face is permitted to be measured to a point beyond the property line that is not the centre line of a street, lane or public thoroughfare if,*

(a) *the owners of the properties on which the limiting distance is measured and the municipality enter into an agreement in which such owners agree that,*

(i) *each owner covenants that, for the benefit of the land owned by the other covenantors, the owner will not construct a building on his or her property unless the limiting distance for exposing building faces in respect of the proposed construction is measured in accordance with this agreement;*

(ii) *the covenants contained in the agreement are intended to run with the lands, and the agreement shall be binding upon their respective heirs, executors, administrators, successors and assigns,*

(iii) *the agreement shall not be amended or deleted from title without the consent of the municipality, and*

(iv) *they will comply with such other conditions as the municipality considers necessary, including indemnification of the municipality by the other parties, and,*

(b) *the agreement referred to in Clause (a) is registered against the title of the properties to which it applies.*

**AND WHEREAS** the parties hereto wish to enter into this agreement to comply with the foregoing provisions of the *Building Code* such that the limiting distance for exposing building faces in respect of the addition constructed on the Chapman's Ice Cream Property shall be measured to a point beyond the property line as referenced in this agreement;

**NOW THEREFORE THIS AGREEMENT WITNESSTH** that in consideration of the terms of this Agreement and the nominal sum of Two Dollars (\$2.00) of lawful money of Canada, and other good and valuable consideration, paid by each of the parties of this Agreement to the other, the receipt of which is hereby acknowledged, the parties agree to and with each other as follows:

1. The parties agree and covenant that, for the benefit of the Chapman's Ice Cream Property, the limiting distance for exposing building faces in respect of the construction of any building on the Expansion Property shall be measured to a point twenty (20) metres north of the most northerly part of the building being constructed on the Chapman's Ice Cream Property.
2. Chapman's covenants that no building or other structure shall be constructed or installed on the Expansion Property unless the limiting distance for exposing building faces in

respect of the proposed construction is in compliance with the provisions of the Ontario Building Code.

3. This Agreement shall be registered on title against both the Chapman's Ice Cream Property and the Expansion Property and shall run with the land and shall not be amended or deleted without the written consent of both Grey Highlands and West Grey.
4. The parties agree that cost of such registration of this Agreement shall be paid by Chapman's.
5. Execution of this Agreement shall be deemed to be authorization by all parties to legal counsel for Chapman's to register this agreement in the appropriate Land Titles Office without further written authorization. Chapman's shall provide Grey Highlands and West Grey with copies of the registration documents for this agreement within thirty (30) days following execution of this agreement by all parties.
6. Subject to the provisions of the *Registry Act* and the *Land Titles Act*, this Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective heirs, administrators, estate trustees, successors and assigns.
7. Chapman's hereby covenants and agrees to save harmless Grey Highlands and West Grey from any loss whatsoever arising out of or pursuant to the execution of this Agreement and the permitted limiting distance for exposing building faces as set out herein. This indemnification shall apply to all claims, demands, costs and expenses in respect to the location of the buildings and structures as set out in this Agreement.
8. This agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all counterparts together shall constitute a single agreement.

[Remainder of page intentionally left blank; signature page to follow.]

IN WITNESS WHEREOF the parties hereto have hereunder affixed their respective hands and seals and Grey Highlands and West Grey have hereunder affixed their corporate seal, attested by the hands of their duly authorized officers.

**SIGNED, SEALED AND DELIVERED**

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

DAVID CHAPMAN'S ICE CREAM LIMITED

Witness \_\_\_\_\_

\_\_\_\_\_  
DAVID CHAPMAN, C.E.O.

I have authority to bind the Corporation.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

THE CORPORATION OF THE  
MUNICIPALITY OF GREY HIGHLANDS

Per: \_\_\_\_\_  
Paul McQueen, Mayor

Per: \_\_\_\_\_  
Debbie Robertson, Clerk

We have authority to bind the Corporation.

Dated this 17 day of April, 2017.

THE CORPORATION OF THE  
MUNICIPALITY OF WEST GREY

Per: Kevin Eccles  
Kevin Eccles, Mayor

Per: Larry C. Adams  
Larry C. Adams, CAO/Deputy Clerk

We have authority to bind the Corporation.