

**The Corporation of the
Township of Selwyn**

By-Law Number 2019-064

**Being a By-law to authorize the execution of a Site Plan Agreement
between the Corporation of the Township of Selwyn and 1559887 Ontario
Ltd.**

Whereas the Ontario Municipal Act, 2001, S.O. 2001, c. 25, Section 2, as amended, states that municipalities are created by the Province of Ontario to be responsible and accountable governments with respect to matters within their jurisdiction, and as such, municipalities are given powers and duties under this Act, and many other Acts, for the purpose of providing good government with respect to those matters;

And Whereas the Ontario Municipal Act, 2001, S.O. 2001, c. 25, Section 5.3, as amended, states that a municipal power shall be exercised by By-law unless the municipality is specifically authorized to do otherwise;

Now Therefore, the Council of the Corporation of the Township of Selwyn hereby enacts as follows:

1. That the Mayor and the Clerk be authorized to execute a Site Plan Agreement between the Corporation of the Township of Selwyn and 1559887 Ontario Ltd.
2. That a copy of the Agreement is attached hereto.

Read a first, second and third time and finally passed this 9th day of July, A.D., 2019.

Mayor Andy Mitchell

Angela Chittick, Clerk

Corporate Seal

Site Plan Agreement

This Agreement made this **** day of *****, A.D. 2019

Between:

1559887 Ontario Ltd.
Hereinafter called the “**Owner**”

of the First Part

And

The Corporation of the Township of Selwyn
Hereinafter called the “**Municipality**”

of the Second Part

Whereas the Owner has represented to the Municipality that the lands described in Schedule “A” attached hereto are owned by it as stated in the Certificate of Ownership attached to this Agreement as Schedule “B”, and further warrants that all municipal taxes levied against the lands have been paid and will be paid as the same falls due;

And Whereas pursuant to the provisions of The Planning Act, the Municipality has designated the property as an area for site plan control;

And Whereas the parties desire to enter into a Site Plan Agreement in regard to certain on-site features of the development of the said property and the provision of services thereto;

Now therefore, this agreement witnesseth that the parties hereto for themselves, their heirs, executors, administrators, successors and assigns, do covenant and agree as follows:

In this Agreement:

- (a) “Municipal Engineer” means the Engineer for the time being of the Corporation of the Township of Selwyn;
 - (b) “Owner” includes a mortgagee in possession, a tenant in possession pursuant to a leasehold interest, and an encumbrancer in possession, and may mean more than one Owner as specified in the Certificate of Ownership;
 - (c) “services” or “facilities” includes sewers, grading, drainage work, roads, curbs, sodding, landscaping, sidewalks, walkways, fencing, signs and other works required to be provided pursuant to this Agreement;
 - (d) where the context permits, words importing the singular number or the masculine or neuter gender also include more persons, parties or things of the same kind than one, and females as well as males.
1. The obligations imposed pursuant to this Agreement affect the land described in Schedule “A” hereto and any restrictive covenants expressed herein run with the land and bind successors in title to the said property as well as the successors and assigns of the Owner.
 2. The encumbrancer, if any, agrees to satisfy all of the obligations imposed pursuant to this document if it should enter into possession of the said lands.

3. The Owner shall secure, register on title and provide to the Municipality a satisfactory Postponement of Mortgage/Charge document with respect to any Mortgages registered in priority to this Site Plan Agreement including:

a. *****

4. This Agreement shall be registered on title to the said lands as provided for by Section 41(10) of the Planning Act, R.S.O., 1990, as amended, as required.

5. The Owner agrees that all documents required herein shall be submitted in a form suitable to the Township and suitable for registration, as required.

6. The following schedules are attached to and form part of this Agreement and no building, structure, or other facility shall be erected, altered, or placed on the said lands except in accordance with the attached Schedules and Plans:

- Schedule 1: Site Plan completed by D.M. Wills Associates Limited dated revised May 23, 2019.
- Schedule 2: Removals and Erosion Sediment Control Plan completed by D.M. Wills Associates Limited dated revised May 23, 2019.
- Schedule 3: Site Servicing completed by D.M. Wills Associates Limited dated revised May 23, 2019.
- Schedule 4: Site Grading completed by D.M. Wills Associates Limited dated revised May 23, 2019.
- Schedule 5: General Notes and Truck Turning Plan completed by D.M. Wills Associates Limited dated revised May 23, 2019.
- Schedule 6: Stormwater Management Details completed by D.M. Wills Associates Limited dated revised May 23, 2019.
- Schedule 7: Stormwater Management Report completed by D.M. Wills Associates Limited, dated May 10, 2018, revised June, 2019.
- Schedule 8: Scoped Environmental Impact Study prepared by Cambium, dated November 24, 2017.
- Schedule 9: Traffic Brief Rusland Storage Facility completed by D.M. Wills Associates Limited dated January 31, 2019.

The Owner further agrees to provide the Municipality with any and all plans, information, sketches, surveys or reports as may be requested by the Municipality during the term of this agreement.

- 7. It is hereby understood and agreed that if construction is not commenced within one year (1) from the date of this agreement, that the Municipality, at its option, may declare the plans in this agreement null and void and require the submission of new plans.
- 8. The Owner shall perform all the work and provide all the materials necessary for the construction of facilities as outlined in the Schedules / Site Plans which are attached to and form part of this Agreement. Such work shall be fully completed no later than July 31, 2020 (known as "the completion date").
- 9. The Owner shall prevent damage being caused to existing public highways, other public works, or municipal property in the course of the development of the said lands and shall restore such property to the condition it was in prior to the commencement of development.
- 10. The Owner shall be solely responsible for maintaining all facilities and services subject to this Agreement, in a good state of repair and provide the care and attention necessary to maintain the landscaping in a health condition. The Owner shall remove snow from walks, driveways, and parking lots when the same exceeds three inches (3") in depth, and cut the grass if it exceeds six inches (6") in height and take reasonable steps to keep the landscaped area clear of weeds. The Owner shall bring all municipal taxes into good standing as at the date of the execution of this Agreement and shall keep all municipal taxes

levied against the lands and premises described in Schedule "A" in good standing thereafter.

11. The Owner shall, during excavation and construction on the site, maintain and keep the site in a satisfactory condition, and without limiting the generality of the foregoing, shall:
 - a) prevent any damage to abutting properties from erosion, runoff, surface water drainage or other nuisance; and
 - b) keep all construction materials, bags, dust or other debris on the site and clean abutting properties immediately if this obligation is not performed.
12. In the event of the sale of the said lands the Owner will obtain the Purchaser's covenant, in writing, to assume full and complete responsibility for the performance of the Owner's continuing obligations under this Agreement including the payment of municipal taxes as the same fall due.
13. The Owner shall bear all costs and expenses incurred by the Municipality in retaining consultants to provide advice and assistance to the staff of the Municipality in reviewing, considering and analyzing any aspect of the application for approval of development of the land described in Schedule "A" hereto annexed, whether such costs and expenses were incurred prior to execution of this Agreement or subsequent to such execution. Without limiting the generality of the foregoing, the Owner specifically acknowledges that the Municipality shall require written confirmation from its consultants that the work illustrated in the schedules referenced in paragraph 3 of this Agreement has been inspected when advised that the same has been completed by the Owner and has been found to be in compliance with the approved schedules. The cost of such inspection shall be bourn by the Owner and may be deducted from any security held by the Municipality to ensure performance of the Owner's obligations. Upon receiving the aforesaid written confirmation from its consultants, the Municipality covenants and agrees to surrender to the Owner any remaining security which it might hold. The Municipality may require the Owner to deposit with the Municipality financial security in a form satisfactory to the Municipality, sufficient to meet such anticipated costs and expenses. In the event that the Owner fails to deposit such security within 10 days of written demand by the Municipality, the Municipality may discontinue all procedures relating to the development of the lands and may cause the Owner to delay commencement of or cease further work on the project until such time as the requirements of the section have been satisfied.
14. The Owner shall deposit with the Municipal Clerk an irrevocable letter of credit in satisfactory form in favour of the Municipality from any Chartered Bank in Canada, for the amount set out in Schedule "C". It shall be on such terms that the Bank shall pay to the Municipality such sums as may be requested from time to time to the maximum limit of the credit without recourse. The letter of credit shall continue to run until the completion date and may be extended at the option of the Municipality if the said services or facilities on the site have not been completed or provided. The letter of credit shall be in such a form that it cannot be revoked unless authorized by the Municipal Clerk and cannot be transferred to any other party. The Owner shall further pay the levies referred to in Schedule "C" annexed hereto upon execution of this Agreement.
15. The Owner acknowledges that this Agreement shall not in any way relieve it of responsibility for the payment of fees, levies or other charges imposed by the Municipality or by other levels of government.
16. In the event the Owner fails to install or maintain the facilities covered by this Agreement, or fails to proceed expeditiously, or fails to install the services in accordance with the specifications and requirements of this Agreement, then, upon the Municipal Engineer, or his designate, giving seven (7) days' written notice by prepaid registered mail to the Owner, the Municipality, through its

employees, agents, or contractors may, without further notice, enter upon the lands and proceed to supply all materials and to do all the necessary inspections and works in connection with the facilities including the repair or reconstruction of faulty work and the replacement of materials which are not in accordance with plans or specifications and to charge the cost thereof, together with the cost of engineering, and any other reasonable expenses incurred by the Municipality, against the Owner. Such entry and work shall not be deemed as acceptance or assumption of said facilities nor an assumption by the Municipality of any liability. It is expressly agreed that the Owner or any person in possession shall not question the cost incurred by the Municipality for labour, materials and all other costs incidental to do the said work and this provision shall be deemed to operate as an effective estoppel in judicial proceedings if such costs are challenged or placed in question. The Owner agrees to permit the Municipal Engineer, or its agents, to enter on the lands at any time to inspect the work. The Municipality may perform any of the required services and collect the cost for the enforcement of this Agreement, as well as for the provision or installation of the requisite services for the said lands, from the security filed by the Owner or may collect the same in the same manner as municipal taxes.

17. The Owner further agrees that entry and performance of works or procedures by the Municipality as herein provided shall not constitute a trespass and the Municipality shall not be responsible for any damages caused in the performance of such work except such damages as may be directly caused by the negligence of the agents, contractors, servants or workmen of the Municipality.
18. The Owner shall indemnify and save the Municipality harmless from any and all actions, claims or demands made or brought against the Municipality by any person or persons for damages arising out of the negligent act, or omissions, or breaches of the Owners, its agents, servants, workmen, and sub-contractors, and assigns in respect of its obligations under this Agreement. It is expressly acknowledged that the Municipality does not warrant the quality of work performed on behalf of the Owner.
19. Unless otherwise stipulated in this Agreement minor alterations or changes to the plan may be requested by the Owner. For the purposes of this provision a minor amendment is deemed to be:
 - (a) a change which results in an alteration to the building coverage of five per cent (5%), (or less), of such coverage, or two hundred (200) square feet, (or less), which ever is the least coverage, as the case may be;
 - (b) a modification to a specific provision of the Agreement which will not conflict with the general intent and purpose of the Site Plan Agreement.

Such requests shall be made to the Manager of Building and Planning who may authorize the change, in writing. A building permit may be required to implement the proposed alteration.

20. In the event that the Owner shall hereafter propose to alter or amend a previously approved Site Plan elevation drawing or landscape drawing, the Owner shall, if directed by the Municipality to do so, provide written notice of such proposed alteration or amendment to all Owners of land which abut the lands described in Schedule "A" hereto annexed, to such extent, in such form and in such manner as the Municipality may from time to time specify, and the Owner shall file with the Municipality such evidence as the Municipality may require as to the giving of such notice. The Municipality shall thereupon either process the application for approval of the proposed alteration or amendment or require that the Owner give to such abutting Owner such further and/or other notice and information as the Municipality may specify, prior to the processing of the application.

21. Any notice required to be given pursuant to the terms hereof shall be in writing and sent by prepaid registered mail, or personally delivered, to the other party at the following address:

(a) Notice to the Owner shall be addressed to:

1559887 Ontario Ltd.
(Chemong Stroage)
1012 County Road 19
Selwyn ON K9J 6X2

and such shall be deemed to be effective notice.

(b) Notice to the Municipality shall be addressed to:

The Corporation of the Township of Selwyn,
1310 Centre Line, P.O. Box 270
Bridgenorth ON K0L 1H0,
Attention: Manager of Building & Planning

and such shall be deemed to be effective notice.

The Owner shall advise the Municipality of any changes of address and subsequent purchasers shall advise the Clerk, in writing, of any changes for service of Notices pursuant to this Agreement. Any such notice that is mailed shall be deemed to be received by the addressee on the fifth day after it is mail.

22. Notwithstanding any provision hereof relating to notice, the Municipality may, in case of emergency as determined by the Municipal Engineer, perform such work as the said Engineer may consider necessary without notice and all other provisions hereof shall apply mutatis mutandis.

23. The Owner further warrants that this Agreement is in registerable form, or will be brought into registerable form, at the Owner's expense, and that actual notice of the existence and terms of this Agreement have been provided to any party who has executed, or will execute an offer or option to purchaser the said lands. Concurrently with the execution of this Agreement, the Owner shall provide the Municipality with adequate security as outlined herein and all instruments necessary to implement the conveyance of lands, easements, or other interests to the Municipality.

24. Notwithstanding anything in this Agreement to the contrary, in the event that the Owner is delayed in the performance of any of the Owner's obligations pursuant to this Agreement for any reason which the Municipality recognizes as being beyond the control of the Owner the Owner shall be permitted such extension of time as the Municipality may, in writing, grant for the performance of such obligations.

25. The Municipality may elect to enforce any or all of the enforcement provisions of this Agreement in such order or succession as the Municipality may see fit and exercise of any one or more of such provisions shall not preclude exercise of any other of such provisions until such time as complete compliance with this Agreement by the Owner has taken place.

26. The Owner shall provide adequate security to the Site during the course of construction. If the structure or building has not been completed by the 31st day of July, 2020, then the Municipality may take appropriate steps to secure the Site and to assess any costs incurred thereby against the Owner. In order to provide adequate security to the Site during the course of the construction, the Owner acknowledges that the Municipality may construct an appropriate barrier or fence around he perimeter of the subject lands and assess all costs against the Owner.

27. The Owner hereby acknowledges that he has understood the provisions of this Agreement and is familiar with the plans referred to in this Agreement. The Owner agrees that the requirements of this Agreement and the plans shall be brought to the attention of its agents and contractors who are construing this development. The Owner acknowledges that it is aware of the requirements of the Site Plan Control By-laws of the Municipality and that a penalty for breach of the Site Plan Control By-laws, in the event the plans are not complied with, may result in a charge under Section 67 of the Planning Act, R.S.O. 1990, Chapter P13, as amended.
28. This Agreement shall be binding upon the parties, their successors or assigns, but shall not be assignable without the express written approval of the parties.
29. This Agreement shall constitute the entire agreement between the parties and there is no representation, warranty, collateral agreement or condition affecting this Agreement other than as expressed herein in writing.
30. This Agreement shall be construed in accordance with the laws of the Province of Ontario.
31. Should any provision of this Agreement be found to be invalid by a Court of competent jurisdiction that provision shall be severable from the remainder of this Agreement and the remainder of this Agreement shall remain in full force and effect.

WITNESS the respective corporate seals of the respective corporate parties hereto, duly affixed under the hands of their respective signing officers, duly authorized in that behalf.

SIGNED, SEALED AND DELIVERED)	1559887 Ontario Ltd.
In the presence of)	(Chemong Storage)
)	c/o Robert Rusland
)	
)	_____
_____)	_____
)	
)	
)	The Corporation of the Township
)	of Selwyn
)	
)	_____
)	Andy Mitchell, Mayor
)	
)	_____
)	Angela Chittick, Clerk
)	
)	

Schedule "A"

to be completed by applicant's solicitor*

Schedule "B" – to be compelled by applicants solicitor

Certificate of Ownership.

Solicitor's Certificate

I, _____, of the City of Peterborough,
a Solicitor duly authorized to practise law in the Province of Ontario, **Do Hereby
Provide An Opinion** that the true Owner in fee simple of all lands included in the plan
as described in Schedule "A" to this Agreement, in accordance with Instrument No. PE
_____, registered in the Land Registry Office for the Land Registry Division of
Peterborough, No. 45 on the _____ day of _____, _____.

I Further Provide an Opinion That the true Owner in fee simple of all land, if any, to be
conveyed to the Municipality over which easements or rights are to be conveyed to the
Municipality pursuant to the terms of this Agreement.

I Further Represent that such lands are free from all encumbrances.

This certificate is given by me to the Municipality for the purpose of having the said
Municipality act in reliance on it and approving and registering the said proposed Site
Plan Agreement.

Dated at Peterborough, Ontario, this ** day of _____, _____.

Barrister and Solicitor

SCHEDULE "C"

The letter of credit deposited in favour of the Municipality shall be in the amount of \$50,000.00.