



CORPORATION OF THE TOWNSHIP OF AUGUSTA

BY-LAW NUMBER 2731

BEING A BY-LAW TO ENTER INTO AN AGREEMENT WITH BRIAN CLEMENTS – IN TRUST

WHEREAS the Municipal Act, 2001 c. 25 S.O. 2001 section 8 allows for the Powers of a Natural Person and those powers may include the entering into an agreement.

AND WHEREAS the Council of the Township of Augusta wishes to enter into a Site Plan Control Agreement with Brian Clements - in Trust

NOW THEREFORE the Council of the Township of Augusta hereby enacts as follows that:

1. That the terms of the agreement are hereby referred to as Schedule "A" to By-Law 2731;
2. The Reeve and Clerk are hereby authorized to sign the agreement on behalf of the Corporation of the Township of Augusta.

READ a first and second time this 14th day of October 2008.

READ a third time and passed this 14th day of October 2008.

REEVE

CLERK

SITE PLAN CONTROL AGREEMENT

BETWEEN:

THE CORPORATION OF THE TOWNSHIP OF AUGUSTA

hereinafter called the "Township"

OF THE FIRST PART

AND:

BRIAN CLEMENTS – IN TRUST

hereinafter called the "Owner"

OF THE SECOND PART

WHEREAS the Owner purports to be the Owner of the lands and premises described in Schedule "A" of this Agreement;

AND WHEREAS pursuant to the *Planning Act*, R.S.O., 1990, P.13, as amended, the whole Township is designated as a site plan control area;

AND WHEREAS the Owner has made application to operate a motorsports park on lands and premises described in Schedule "A" of this Agreement (herein referred to as the 'Lands');

AND WHEREAS By-law 2673 stipulates that a site plan agreement be entered into;

AND WHEREAS subsection 41(10) of the *Planning Act* permits the registration of this Agreement against the lands to which it applies in order to secure provision of works, facilities or matters referred to in subsection 41(7) and (8) of the *Planning Act* and the construction of the development in accordance with the approved plans and drawings;

AND WHEREAS the Owner and the Township have agreed to certain matters hereinafter expressed relating to the use of the said Lands;

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of Township's approval of the development of the Lands and other good and valuable consideration, the Owner hereby agrees with the Township as follows:

1. The following Schedules are attached to and form part of this Agreement:

Schedule 'A' -	Description of Owner's Lands
Schedule 'B' -	Security for Works
Schedule 'C' -	Site Plan Drawings
Schedule 'D' -	Engineering and Other Specifications and Special Conditions
Schedule 'E' -	Grants of Easements and other Public Lands

2. The Township has granted its approval to the use of the Lands for a Motorsports Park and hereinafter called the 'event', in accordance with those plans and drawings (the "Site Plan Drawings") that are attached as Schedule 'C' to this Agreement. The Township agrees that this Agreement shall not apply to the use of the land for agricultural activities.

3. The Owner shall, at its sole risk and expense and to the Township's standards and specifications, develop the Owner's Lands and construct in a good and workmanlike

- manner all, works, services and facilities required in connection therewith (the “Works”) in accordance with the Site Plan Drawings and the terms of this Agreement as set out in Schedule ‘D’ to this Agreement.
4. Prior to the commencement of any construction of any works, the Owner shall obtain all permits and approvals required by any agency or authority having jurisdiction and shall provide a copy of said permit(s) or approval(s) to the Clerk of the Township.
 5. The Owner shall ensure that the requirements of this Agreement and the Site Plan Drawings are brought to the attention of its contractors, employees and workers prior to the start of any construction.
 6. The Owner agrees that no new buildings associated with the event shall be constructed and that no application will be made for a building permit in this regard. The Owner may apply for a building permit for a sign, where required.
 7. The Owner represents and warrants to the Township that no substantive deviations nor changes shall be made and no construction shall take place contrary to the Site Plan Drawings and/or other conditions, provisions or specifications without the written approval of the Township and that such approval may require an amendment to this Agreement. It is further agreed that the Owner will submit to the Township revised drawings to reflect any changes.
 8. Despite Clause 7, the Owner shall undertake such changes as may be required by the Township in order that the Site Plan Drawings shall comply with all relevant provisions of the building or zoning by-laws or other by-laws of the Township, and all regulations or laws of any other governmental body, or approval agency or authority, as may be applicable.
 9. The Owner covenants and agrees that the Lands shall be used and the Works constructed thereon in such a manner that, once fully developed, they shall function, operate and be maintained by the Owner as a single development with a single set of works.
 10. The Owner agrees that before proceeding with development, that the Owner shall:
 - a. deposit financial security on account of the Works to be constructed in connection with the use of lands for the event in such amount as the Township may require, as set out in Schedule ‘B’; and
 - b. execute and deliver to the Township any report, plans, specifications, modifications to the Site Plan Drawings or other matters as may be required to amend this Agreement for the purposes of permitting the Works to proceed.
 11. The Owner covenants and agrees to retain, for the duration of the development of the Owner’s Lands, a Professional Engineer (hereinafter referred to as the “Engineer”) who works under a Consulting Firm registered in Ontario for municipal engineering applications from the Association of Professional Engineers of Ontario. The Engineer will be required to inspect and certify to the Township that the Works required have been constructed in accordance with the approved Site Plan Drawings and any other related engineering drawings, specifications, conditions or reports. The Engineer’s certificate or certificates, shall be in a format acceptable to the Township, or such other qualified professionals as may be appointed to act on behalf of the Township, acting reasonably.
 12. The Owner covenants and agrees that once the Works required to be provided, constructed or installed by it as shown on the Site Plan Drawings have been completed to the satisfaction of the Township, the Owner shall maintain the Works in the approved condition until this Agreement is amended or otherwise released from title. If any of the Works are not being maintained to the satisfaction of the Township, or if the Owner is otherwise in default of this Agreement, the Township may, on written notice to the Owner, require the Owner to comply with the terms of this Agreement.

13. The Owner hereby grants to the Township, their servants and contractors, a license to enter the Lands during normal business hours of 8:00 a.m. and 5:00 p.m. from Monday to Sunday of any week for the purposes of inspecting the Works and to perform any work arising from or the result of any default by the Owner under this Agreement.
14. The Township will make reasonable efforts with the number of personnel available to it to inspect the Works to be constructed in accordance with the Site Plan Drawings and this Agreement, but the Owner shall indemnify and save harmless the Township, their servants, agents and contractors from any responsibility or liability arising directly or indirectly from any failure or delay in completing such inspections unless caused by the negligence of the Township.
15. As security for the Owner's obligation to construct the Works in accordance with this Agreement, the Owner shall deposit with the Township, cash or an irrevocable letter of credit from a chartered bank in a form satisfactory to the Township for an amount calculated in accordance with Schedule 'B' to this Agreement.
16. The Owner, when not in default, may apply to the Township as construction of the Works proceeds, for release of part of its security at regular intervals, and each application shall include an up-to-date estimate of the cost to complete the Works verified by the Owner's Engineer.
17. Upon receipt of any application, the Township may authorize the release of such portion of the security as the Township, in all of the circumstances considered reasonable, provided that at no time shall the amount of the security held by the Township be less than the most recent estimate of the cost to complete the works.
18. Upon completion to the satisfaction of the Township of the Works to be constructed in accordance with this Agreement and the performance by the Owner of all other obligations under this Agreement, and upon receipt of the certificates from the Engineer as required by this Agreement, the security or any balance thereof remaining shall be returned forthwith to the Owner.
19. As a condition to this Agreement, the Owner shall keep in force until the certificate of substantial performance for the Works has been issued

23. The Owner shall hold back from its payment to any persons who may supply services or materials in connection with the construction or maintenance of the Works, all amounts required by the *Construction Lien Act*, and shall indemnify the Township against any claims, actions or demands in connection with the Works and all costs incurred by the Township as a result thereof.
24. If any lien is claimed pursuant to the *Construction Lien Act* for the supply of services or material in connection with the construction or maintenance of any portion of the Works on any lands owned by the Township or any other public authority, or the maintenance of them, the Owner shall be considered in default under this Agreement and shall continue to be in default until all liens are discharged.
25. The Owner agrees to indemnify and save completely harmless the Township from and against all claims, demands, actions, causes of action and costs resulting from any construction performed by the Owner, its employees, agents and contractors pursuant to the provisions of this Agreement, and, on demand by the Township, the Owner will take such steps as may be necessary to immediately discharge from title to municipal lands, all liens registered in respect of the Works, failing which, the Township may, in its absolute discretion, use the security deposited by the Owner to pay into court any amounts required to discharge all liens plus costs.
26. The Owner shall ensure that all hold back monies retained with respect to contracts for the Works are released in accordance with the provisions of the *Construction Lien Act*.
27. The Owner covenants and agrees that neither it nor any person under its authority shall be entitled to develop the Lands contemplated by this Agreement until this Agreement has been fully executed and registered on title to the Owner's Lands. This provision shall apply to any subsequent amendment to this Agreement, where the amendment is required to be registered on title to the Owner's Lands.
28. The Owner covenants and agrees not to permit the use or operation of the event unless and until all the applicable requirements of the *Ontario Building Code*, and other applicable laws have been met. More specifically, the covenant in this clause shall be deemed to include:
 - A. The construction of the parking area;
 - B. The installation of portable sanitation facilities in sufficient numbers as required by the Leeds Grenville & Lanark Health District Health Unit;
 - C. The installation of waste reception and collection facilities for the temporary on-site storage of wastes.
 - D. The installation of a silt-screen fence along the boundary of the wetland.
 - E. The installation of a straw bale check dam in the watercourse for silt control.
 - F. The installation of temporary fencing and no trespassing signage to prohibit off-site access to the wetland and around the drainage ditch as shown on Schedule "C".
 - G. The installation of an alternate emergency access road to intersect Dixon Road immediately to the west of the residence owned by Onne Van Hoek.
 - H. The installation of a landscape buffer.
29. If the use of Lands occurs otherwise than in accordance with this Agreement, the Owner covenants and agrees that the Township shall be entitled to obtain an order from a court of competent jurisdiction prohibiting the occupancy or use of the said Lands until such time as the terms of this Agreement have been fully complied with, and the Owner shall be stopped from opposing such application on the part of the Township.
30. If the Owner defaults in the performance of any obligation under this Agreement and such default continues more than fifteen (15) days after the Township delivers written notice to the Owner requiring the Owner to remedy the default, the Township may, without further notice to the Owner, do such thing at the Township's expense as it deems

- necessary to remedy the default, and the Township may recover the expense incurred in doing such thing by action or the same may be recovered in like manner as municipal taxes in accordance with the provisions of Section 427 of the *Municipal Act, 2001*, S.O. 2001, Chapter 25, as amended.
31. The failure of the Township at any time to require performance by the Owner of any obligations under this Agreement shall in no way affect its right thereafter to enforce such obligation, nor shall the waiver by the Township of the performance of any obligation hereunder be taken or be held by the waiver of the performance of the same or any other obligation hereunder at a later time. The Township shall specifically retain its rights at law to enforce this Agreement.
 32. Nothing in this Agreement shall relieve the Owner from compliance with all applicable municipal by-laws, laws, regulations, notices or other policies or laws and/or regulations established by any other governmental body that may have jurisdiction over the Lands.
 33. Time shall always be the essence in this Agreement. Any time limits specified in this Agreement may be extended with the consent in writing of both the Owner and the Township, but no such extension of time shall operate or be deemed to operate as an extension of any other time limit, and time shall be deemed to remain of the essence of this Agreement notwithstanding any extension of any time limit.
 34. It is the intent of this Agreement that the Township shall not incur any expense for the development of the Owner's Lands and every obligation of the Owner under this Agreement shall be deemed to include the words "at the expense of the Owner", unless specifically stated otherwise.
 35. The Owner agrees to pay the reasonable legal, engineering, landscape architectural, land use planning and other administrative costs incurred by the Township to review and process the Site Plan Drawings, including but not limited to, the preparation of this Agreement, any amendment thereto and including the review and processing of all plans and specifications and the supervision and inspection of the Works for compliance with this Agreement.
 36. All invoices, costs and expenses received or incurred by the Township and payable by the Owner shall be paid within forty-five (45) days of the Township's invoice or demand for payment to the Owner, failing which the Owner shall be in default under this Agreement and shall continue in default until payment plus all accrued interest is made in full.
 37. Interest shall be paid by the Owner on all overdue accounts at the same rate per annum and calculated in the same manner as the Township charges on overdue municipal taxes and any payments received shall be applied first on account of accumulated interest and then on the outstanding amount.
 38. The Owner consents and agrees to the registration by the Township at the Owner's expense of this Agreement against the title to the Lands and, in accordance with s. 41(10) of the *Planning Act*, all of the terms and conditions of this Agreement may be enforced against the Owner and any and all subsequent owners of the Lands.
 39. The Owner covenants and agrees to obtain and register, at its own expense, such documentation from its mortgagees or encumbrancers as may be deemed necessary by the Township to postpone and subordinate their interest in the Lands to the interest of the Township to the extent that this Agreement shall take effect and have priority as if it had been executed and registered prior to the execution and registration of the document or documents giving the mortgagee and/or encumbrancers their interest in the Lands.
 40. All covenants in this Agreement shall be construed as being joint and several and that, when the context so requires or permits, the singular numbers shall be read as if the plural were expressed, and the masculine gender as if the feminine or neuter gender, as the case may be, were expressed.

41. Any dispute between the parties with respect to this Agreement shall, at the request of a party, be submitted to arbitration pursuant to the *Arbitrations Act*, 1991, S.O. 1991, c. 17 as amended, and the decision of the arbitrator, or if more than one, the decision of a majority shall be final and binding on the parties.
42. Each party shall pay its own costs of the arbitration and shall pay equally the costs of the arbitrator(s).
43. The Owner agrees that if any section, clause or provision of this Agreement, is for any reason declared by a Court of competent jurisdiction to be invalid, the same shall not affect the validity of the Agreement as a whole or any part thereof, other than the section, clause, or provision so declared to be invalid and it is hereby declared to be the intention that all remaining sections, clauses or provisions of this Agreement shall remain in full force and effect, notwithstanding that one or more provisions thereof shall be declared to be invalid.
44. This Agreement shall be in force as of the date of the last signature to appear below.
45. This Agreement shall enure to and be binding upon the parties hereto, and their respective successors and assigns.

IN WITNESS WHEREOF the parties hereto have affixed their Corporate Seals, under the hands of their proper signing officers, duly authorized in that behalf.

SIGNED, SEALED AND DELIVERED

In the presence of:

Witness

Date

Brian Clements

Date

**The Corporation of the Township of
Augusta**

Per:

Head of Council

Date

Per:

Clerk

Date

Schedule 'A'
Description of Owner's Lands

Being Part of Lots 25 and 26, Concession 6, geographic township of Augusta, in the United Counties of Leeds and Grenville and having a lot area of 14.46 hectares (35.73 ac.).

**Schedule 'B'
Security for Works**

The following is the estimated cost of those works for which Security is required and the amount of the security to be deposited with the Township of Augusta, respectively:

WORKS	COST OF WORKS AMOUNT OF SECURITY
Township of Augusta	
1. Graveled Roads	\$
2. Parking Areas	\$
3. Landscape Buffer	\$
4. Silt Screen Fencing and Straw Bale Check Dams	\$
5. Temporary Fencing	\$
6. Signs ¹	\$
Total	\$

Signs shall include, 6 fire route signs, 4 directional signs to parking and camping areas respectively and a stop sign.

Schedule 'C'
Site Plan Drawings

The site plan drawings are deemed to include the following:

1. Novatech Site Plan Drawing, Augusta Motorsport Park, _____, 2008.

Schedule 'D'

Engineering and Other Specifications and Special Conditions

1. Access Road and Fire Route

The access road shall have a continuous clear width of no less than 7.5 m and shall be capable of supporting the weight of the Township's fire apparatus. The construction of the access road shall be to the satisfaction of the Township.

2. Parking Area

The parking area shall be laid out in accordance with the Site Plan Drawings (Schedule 'C'). No parking shall be permitted along the access road, any designated fire route or in any parking aisles. The design of the parking area shall provide for 300 standard parking space dimensions of 2.6 m x 5.5 m Lane or aisle widths shall be no less than 4.5 m. The limit of the parking area shall be demarcated by a fence, curb stops, bollards or any combination thereof to prevent parking on any lands outside of the designated parking area.

3. Landscape Buffer

The Owner shall plant healthy nursery tree stock as illustrated and described on the Site Plan Drawings as Landscape Buffer to provide an uninterrupted foliage screen along the west and north sides of the parking area. Such trees shall be native species and have a minimum height of 6 m at maturity. The species selection and the planting and maintenance program for the trees shall be supervised by a qualified Ontario Landscape Architect. Any planting stock which dies shall be replaced with healthy nursery stock within the same or next subsequent growing season. Reference shall be made to the Planting Plan, (Schedule 'C').

4. Signs

Fire Route

Six 'Fire Route' signs shall be installed at no more than 100 m intervals along the principal access road and the emergency access road respectively in compliance with the standards set out in the inset. The access road shall have a continuous width of no less than 7.5 m as set out on Schedule 'C'.

