

This Agreement made in duplicate, this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.  
Between:

**DUNCAN SHAW**

hereinafter referred to as “the Owner”

OF THE FIRST PART

- and -

**THE CORPORATION OF THE TOWN OF ORANGEVILLE**

hereinafter referred to as “the Town”

OF THE SECOND PART

**Background**

1. The following are some of the facts upon which this agreement is based.
  - (a) The Owner is the registered and beneficial Owner of property described as Registered Plan 216, Lots 8 & 9, 7R-6765, Part 2 and 3. in the Town of Orangeville, County of Dufferin, which is hereinafter referred to as “the Property” (P.I.N. 34014 – 0081);
  - (b) This agreement is being entered into to satisfy the conditions of a Holding (H) Zone Symbol removal imposed by the Ontario Land Tribunal (Case No. OLT-21-001691) with respect to an application for a Zoning By-Law Amendment (RZ-2022-01) to re-zone the Property from Residential Second Density (R2) Zone to Residential Third Density (R3) Zone and permit the construction of a semi-detached dwelling;
  - (c) Prior to the issuance of any building permits for the construction of the semi-detached dwelling, the Owner must satisfy conditions of the Holding (H) Zone Symbol applied to the Property, which includes provision of municipal services;
  - (d) The servicing of the semi-detached dwelling must be provided by connecting to the Town’s municipal sanitary and water main;
  - (e) There is no existing municipal sanitary or water main infrastructure running along or under Hannah Street on to which the subject Property fronts;
  - (f) The Owner has proposed to install sanitary sewer main and watermain services from the Property to the existing municipal sanitary sewer and water main at, on or under William Street, to be connected via new force main sanitary sewer and water main (hereinafter referred to as the “Private Service Connections”); and
  - (g) The Town has approved the Owner’s proposal, subject to the entering into this Agreement, which is to be registered on title.

**Definitions**

2. In this Agreement:
  - a) “**Approved Plans and Reports**” means the following Plans and Reports that have been reviewed and approved by the Town in respect to the Site Works:
    - i. **Arborist Report**, prepared by R.J. Burnside & Associates Limited, dated February 2021
    - ii. **Tree Preservation Plan**, Figure No. 2, prepared by R.J. Burnside & Associates Limited, dated January 6, 2021;
    - iii. **Grading and Servicing Plan**, Dwg No. GS1, prepared R.J. Burnside & Associates Limited, last revised June 6, 2021
    - iv. **Functional Servicing Brief**, prepared by R.J. Burnside & Associates Limited, dated March 2021.

- b) **“Consulting Engineer”** means a professional engineer retained by the Owner, competent in the municipal engineering field and maintaining current registration with the Association of Professional Engineers of Ontario.
- c) **“Consulting Arborist”** means a professional arborist retained by the Owner, who maintains current certification with the International Society of Arboriculture (ISA).
- d) **“Compensation Planting”** means the planting of trees to compensate for tree removals as described in the Arborist Report.
- e) **“LID Measures”** means the Low Impact Development Measures described in the Functional Servicing Brief and Grading and Servicing Plan.
- f) **“Private Service Connections”** means the watermain and sanitary sewer main connections, including pipes, valves, pumps and other appurtenances, as constructed from the dwelling(s) on the Property to their connections to the existing municipal sanitary sewer main and watermain at, on or under William Street, as described in the Functional Servicing Brief and the Grading and Servicing Plan.
- g) **“Property”** means the lands owned by the Owner and described as Registered Plan 216, Lots 8 & 9, 7R-6765, Part 2 and 3. in the Town of Orangeville, County of Dufferin.
- h) **“Reinstatement”** means the restoration of all parts of the municipal road allowance that are disturbed by the installation of the Private Service Connections, to a condition deemed to be satisfactory to the Town, which may include restoration to asphalt, curb(s), sidewalk(s) and boulevard vegetation, including seeding/sodding, tree planting and Compensation Planting.
- i) **“Site Works”** means the construction, installation and maintenance of the Private Service Connections, LID Measures, Tree Protection Measures and Compensation Planting.
- j) **“Tree Protection Measures”** means the protection of existing tree(s) as described in the Arborist Report.

#### Conditions

- 3. The Owner shall at its sole expense, construct the Private Service Connections from the dwelling(s) situated on the Property in accordance with the Approved Plans and Reports, all to the satisfaction of the Town.
- 4. The Owner shall be responsible, at its sole expense, for future maintenance and repair of the Private Service Connections in perpetuity.
- 5. The Owner agrees that any and all future maintenance and repair of the Private Service Connections, including any replacement thereto, shall be approved by the Town. The Owner shall not commence any maintenance and repairs of the Private Service Connections without providing prior notice to the Town and receiving said approval from the Town.
- 6. The Owner shall, prior to issuance of any Occupancy Permit for any dwelling on the Property, construct and implement LID Measures on the Property, to the satisfaction of the Town.
- 7. The Owner agrees to include warning clauses in any purchase and sale agreements for the new dwelling lots, advising future owners of:
  - i) the presence and function of the LID Measures on the Property, along with recommended maintenance practices; and
  - ii) the owner’s responsibility for future maintenance and repair of the Private Service Connections in perpetuity, including pipes, valves, pumps and other appurtenances, at the owner’s sole expense.
- 8. The Owner agrees to carry-out the Tree Protection Measures prior to any site alteration

on the Property and shall, prior to issuance of any Occupancy Permit, implement any Compensation Planting, all to the satisfaction of the Town.

9. The Owner shall, upon execution of this agreement, provide an irrevocable letter of credit or cash in the amount of **Fifty Thousand Dollars (\$50,000.00)** (the "Site Works Security") to guarantee and secure the due performance of the obligations imposed upon it by this agreement, including but not limited to the Site Works, Reinstatement and any construction activities associated with the proposed dwelling(s) on the Property, to the satisfaction of the Town. The owner acknowledges and agrees that there shall be no reductions permitted in the Site Works Security lodged under this Agreement.
10. The Owner agrees that, if an irrevocable letter of credit is used as the Site Works Security it will be issued only by a Canadian Schedule 1 financial institution, as defined by the Bank Act, 1991, c. 46. If the letter of credit is provided in a form that is not in a format satisfactory to the Town, the Town reserves the right unconditionally to reject the non-compliant letter of credit submitted by the Owner and order that no Site Works be undertaken until such time that the Owner provides the Site Works Security in a satisfactory manner.
11. The Owner agrees that the Site Works Security shall be released upon:
  - a) satisfactory receipt by the Town of certification(s) by the Owner's Consulting Engineer that the Site Works have been completed in accordance with the Approved Plans and Reports;
  - b) satisfactory receipt by the Town of certification(s) by the Owner's Consulting Arborist that the Tree Protection Measures and Compensation Planting have been completed in accordance with the Approved Plans and Reports;
  - c) a minimum period of six (6) months has elapsed following the fulfillment of Paragraphs 10 a) and 10 b) above; and
  - d) Town staff having completed a satisfactory inspection of all Site Works following the minimum six (6) month time period referenced in Paragraph 11 c). The Owner further acknowledges and agrees that the Town will not perform any inspections during the period beginning November 15 and ending April 15 due to ground and weather conditions.
12. The Owner acknowledges that Development Charges are payable to the Town, the County and the Boards of Education prior to the issuance of any building permit. The actual amount due will be based on the prevailing Development Charge rates at the time of the issuance of building permit.
13. The Owner agrees to pay cash-in-lieu of parkland dedication, in accordance with By-law 110-2008, prior to the issuance of a building permit for development of the Property.
14. The Owner acknowledges that failure to comply with its obligations set forth in this agreement shall be deemed to be a material and fundamental breach of this agreement and agrees that the Town may perform or cause to be performed any obligations, including maintenance and repair to the Services, in accordance with this Agreement, at the expense of the Owner and may collect any expenses incurred by the Town in the same manner as unpaid taxes or by any other means allowable by law.
15. If a party fails to perform all or part of its obligations under this agreement (other than for delay in the payment of money due and payable hereunder) due to an event of Force Majeure (meaning an event beyond the reasonable control of the affected party that is unforeseeable, or unavoidable and beyond remedy if foreseen, and which happens after the execution of this agreement and renders the full or partial performance of this agreement impossible or impracticable), events of Force Majeure include but are not limited to floods, fires, draughts, typhoons, earthquakes, and other acts of God, strikes, insurrections, turmoil and war (whether declared or not) and any action or inaction of any governmental authority, the performance of such obligations shall be suspended during the period during which such performance is affected by the event of Force Majeure.
16. Any provision hereof that becomes illegal, invalid, or unenforceable will not affect the validity and enforceability of the other provisions of this agreement.

- 17. No variation or amendment of this agreement will be effective unless it is made in writing and signed by each party's representative.
- 18. The parties each agree that it has had the opportunity to obtain independent legal advice regarding the terms of this agreement.

**Postponement of Interest**

- 19. The Owner agrees to obtain, in a registerable form, a postponement whereby any and all existing or prior charges, mortgagees or other prior encumbrances of any kind postpone whatever interest it may claim in the property with the intent that this Agreement shall take effect as though executed and registered prior to the creation of such right or interest and prior to the execution and registration of any mortgage, agreement or other document creating or defining such rights or interest.

**Registration of Agreement**

- 20. The Town shall be entitled to register this Agreement and any amendments hereto upon the title to the Property at the Owner's expense and the Owner shall execute any documents that may be required to allow such registration. The Owner agrees to pay the cost of such registration as well as any further costs incurred by the Town as a result of the registration of any other document pertaining to this Agreement.

**Agreement Runs with Land**

- 21. This agreement shall endure to the benefit of the Town, its successors and assigns. The benefits and the burden of the covenants, agreements, conditions and undertakings herein contained shall run with the land and are binding upon the land and upon the Owner and its successors and assigns.

**Gender and Number**

- 22. In this agreement, words importing the singular number include the plural and vice versa and words importing the masculine gender include the feminine and neuter genders.

In Witness whereof the Parties have signed this Agreement.

in the presence of	)	<b>DUNCAN SHAW</b>
	)	
	)	
	)	Per: _____
	)	Print Name: _____
	)	Position: _____
	)	Date: _____
	)	
	)	I have the authority to bind the corporation
	)	
	)	<b>THE CORPORATION OF THE TOWN OF ORANGEVILLE</b>
	)	
	)	_____
	)	Lisa Post, Mayor
	)	
	)	Date: _____
	)	
	)	_____
	)	Tracy MacDonald, Clerk
	)	
	)	Date: _____