

THE CORPORATION OF THE TOWN OF GEORGINA

ORCHIDTRAIL BUILDING (BT) CORP

PLAN OF SUBDIVISION 19T-20G01  
CONCESSION 3, PART LOT 14 & PART LOT 15 (NG)

EARTHWORKS AGREEMENT

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THIS AGREEMENT made in duplicate, this            day of           , 2022.

B E T W E E N:

**ORCHIDTRAIL BUILDING (BT) CORP.**

company duly incorporated under the laws of the Province of Ontario,

hereinafter called the "OWNER"

OF THE FIRST PART:

and --

**THE CORPORATION OF THE TOWN OF GEORGINA,**

hereinafter called the "TOWN"

OF THE SECOND PART:

WHEREAS the Owner has represented to the Town it is the Owner of certain lands as described in Schedule "A" attached hereto (the "Lands") and received approval for draft plan of subdivision in September 2017 respecting 19T-15G03;;

AND WHEREAS the Owner has not yet satisfied the conditions of draft plan approval and the plan of subdivision has not yet been registered;

AND WHEREAS the Owner proposes to undertake earth works in support of future municipal services within the lands prior to the registration of the plan of subdivision as described in Schedule "D", attached hereto;

AND WHEREAS the Town agrees to permit said earth works provided the Owner enters into this agreement, which sets out the terms and conditions of the Town's approval;

NOW THEREFORE this agreement witnesseth that in consideration of the Town permitting earthworks on the lands prior to registration of the plans of subdivision, the covenants hereinafter expressed and other good and valuable consideration, the parties hereto covenant and agree, one with the other, as follows:

**PART I      DEFINITIONS AND SCOPE OF AGREEMENT:**

1.1      Definitions

In this Agreement:

- a)      **"Agreement"** means the within Earthworks Agreement and the schedules attached hereto;
- b)      **"Director"** means the Director of Development Services of the Town of Georgina or persons so designated to act on his behalf;
- c)      **"Engineer"** means a Professional Engineer retained by the Owner in accordance with section 2.1;
- d)      **"Lands"** means the lands and premises described in Schedule "A";
- e)      **"Works"** means those certain works on the Lands as described in Schedule "D".

1.2      Lands Affected

This Agreement applies to the Owner's Lands. The Owner's solicitor in the Certificate attached hereto as Schedule "B" confirms the registered ownership of the Owner's Lands.

### 1.3 Scope of Agreement

The Owner agrees to construct and complete the Works at its expense and in a good and workmanlike manner. The Works shall be constructed in accordance with accepted engineering drawings to the satisfaction of the Director and the Owner shall complete, perform or make payment, for such other matters as may be provided for herein.

### 1.4 Earthworks

For the purposes of this Agreement, "earthworks" means the soil loading requirements for the construction of municipal services in accordance with the approved plans which may include, but is not limited to, clearing, grubbing, tree cutting and removal, soil loading, erosion and sediment control facilities and appurtenances, road construction and grading to prepare the soil for road construction (the "Earthworks") prior to registration of the plan of subdivision and entering into a Subdivision and/or Pre-Servicing Agreement.

### 1.5 Requirement to Enter into Development Agreement

This Agreement does not relieve the Owner from the requirement to enter into a Subdivision Agreement or any relevant Agreement with the Town prior to registration of the plan of subdivision.

### 1.6 Duties and Obligations

This agreement shall define the obligations and duties of the Owner with respect to completing Earthworks on the Lands and without limiting the generality of the foregoing, shall include the installation, construction, repair and maintenance of the public works to be provided, the nature and specifications thereof and payments required to be made to the Town and such other matters more specifically set out herein.

## **PART II ENGINEERING CONSULTANT**

2.1 The Owner agrees to retain a Professional Engineer. This said Engineer shall carry out all necessary work to supervise the design, layout, inspection and maintenance required for the construction of the Works herein referred to and to remedy any defects as required. Such Engineer, or a successor thereto, shall continue to be retained until the Works provided for in this agreement are completed and formally accepted by the Town.

## **PART III FINANCIAL PAYMENTS AND SECURITY**

### 3.1 Payments to the Town

The Owner covenants and agrees to pay to the Town the amounts set out in Schedule "E" hereto. The Owner further acknowledges the Town's right and requirement to assess levies on all lots and blocks of this subdivision.

The Owner agrees that in the event the proceeds received by the Town pursuant to Schedule "E" are not required, or likely to be required wholly, or in part, by reason of the Owner undertaking this subdivision, such proceeds may then be expended for such other general or specific purposes that the Town shall, at its absolute discretion, determine.

### 3.2 Tax Arrears

The Owner covenants and agrees to pay all arrears of taxes outstanding against the Lands, prior to the execution of this Agreement by the Town.

### 3.3 Designated Charges and Imposed Rates

The Owner agrees to commute and pay forthwith, prior to the execution of this Agreement by the Town, designated charges and imposed rates now or to be assessed and levied upon the Lands within the said plan, including but not limited to levies under the *Ontario Water Resources Act*, the *Public Utilities Act*, the *Municipal Drainage Act* and the *Municipal Act*.

### 3.4 Lawful Levies and Rates

The Owner further undertakes and agrees to pay all taxes levied, or to be levied, on the Lands on the basis and in accordance with the assessment and collector's roll entries until such time as the Lands herein being subdivided has been assessed and entered on the collector's roll according to the Registered Plan.

Notwithstanding the Works to be constructed and installed by the Owner, the services to be performed and the payments to be made pursuant to this Agreement, the Lands in the said subdivision shall remain liable in common with all other assessable property in the Town to all lawful rates and levies of the Town.

Interest shall be payable by the Owner to the Town on all sums of money payable under this Agreement, which are not paid within thirty (30) days from the due date. The rate of interest payable shall be fifteen percent (15%) per annum.

### 3.5 Development Charges

The Owner acknowledges that a Development Charge shall be payable on each lot and/or block within the subject lands, prior to the issuance of a building permit for said lot and/or block. The Development Charge shall be calculated at the time of payment in accordance with all applicable by-laws passed pursuant to the *Development Charges Act*, 1997, and any amendments thereto.

### 3.6 Securities for Internal Works and Road Fouling Deposit

Prior to execution of this agreement, the Owner agrees to make a cash deposit or provide a Letter of Credit in the amount of one hundred thousand dollars (\$100,000.00) to the Town which may be used by the Town to clean any streets leading to, or within, the development which have been fouled or to repair any damage to streets and appurtenances thereon leading to the development which has been caused by the operations of the Owner, its contractors, agents or workmen. This will also include overall site maintenance and site stabilization.

### 3.8 Release of Securities

All securities provided pursuant to Clauses 3.6 and 3.7 of this Agreement shall only be released at the Owner's request subsequent to the execution of the future Subdivision and/or Pre-Servicing Agreement(s) and the satisfaction of the security requirements of those agreements.

### 3.9 Peer Review Fees

In the event that the Town requires the services of its Peer Review Consultants respecting the Works contemplated herein, the Owner covenants and agrees to pay all requisite invoices within fifteen (15) days of submission by the

Town to the Owner of any such invoices.

### 3.10 Security Maintenance

The Owner agrees that in the event that the Town draws upon any security pursuant to this agreement the Owner shall re-establish the total aggregate amount within ten (10) days of the date of the use or this agreement shall be considered to be in default.

## **PART IV      LIABILITY INSURANCE AND INDEMNITY**

### 4.1 Liability Insurance

Prior to execution of this Agreement by the Town, the Owner covenants and agrees to supply to the Town the following:

- a) General Liability Insurance in the amount of Five Million Dollars (\$5,000,000.00) in a form satisfactory to the Town Solicitor including but not limited to bodily injury including death, personal injury, property damage including loss of use thereof, non-owned automobile and contain a cross liability/severability of interest clause. The Town shall be named as an additional insured.
- b) The policies shall be endorsed to provide the Town with not less than thirty (30) days' written notice of cancellation.
- c) In the event that the Owner fails to maintain insurance as required the Town shall have the right to issue a Stop Work Order.
- d) Evidence of insurance must be satisfactory to the Town and shall be provided prior to the signing of the Agreement and shall remain in effect until such time as final acceptance of the earthworks outlined within this Agreement.
- e) As determined by the Town, the Owner may be required to provide and maintain additional insurance coverage(s), which are related to this Agreement.

### 4.2 Indemnification

The Owner shall indemnify and save harmless the Town and its officers, employees, agents and elected and appointed officials from and against all claims, demands, losses, damages, costs (including reasonable legal costs), actions and other proceedings made, sustained, brought, prosecuted, or threatened to be brought or prosecuted in any manner based upon, occasioned by or attributable to an injury to or death of a person or damage to or loss of property, infringement of rights or any other loss or damages whatsoever, arising in relation to the project, including, without limitation, the construction and/or maintenance of all or any of the Works or the lack of maintenance of such Works by the Owner in accordance with this Agreement, from the date of commencement of any Works until final acceptance thereof by the Town.

## **PART V      CONSTRUCTION OF PUBLIC WORKS**

### 5.1 Design and Specifications

Notwithstanding any reviews, approvals, criticisms or modifications given by the Town or its consultants, neither the Town, the Director nor the Town's Consulting Engineer shall in any way be responsible for the design drawings or the plans and specifications related to these Works and the Owner shall bear sole

responsibility for the soundness of the engineering design and for ensuring that the works required to be done will function as intended and contemplated.

## 5.2 Earthworks Regulations

The Owner covenants and agrees that any fill material to be imported to the site for the purpose of engineered fill will comply with the testing regulations established under Part 4, Item 4.1.h. of the Town's Site Alteration By-law 2011-0044 (REG-1), as may be amended. The Owner further covenants and agrees that the Owner shall obtain full approval from the Town and any other applicable Agencies prior to any fill importation.

## 5.3 Access to the Development

The Owner covenants and agrees that access to the Lands during the period of construction is restricted such that access shall be by way of Catering Road entrance, as approved by the Director for each respective phase.

## 5.4 Commencement of Construction

The Owner covenants and agrees to give to the Town seven (7) days' notice in writing of the date upon which construction shall commence of any Works.

## 5.5 Inspections by Director of Development Services

The Owner covenants and agrees that the Director may inspect the construction of Works under any contract, but such inspection shall in no way relieve the Owner from its responsibility to inspect the said works itself. If, at any time, the construction of public works is not, in the opinion of the Director, being carried out in accordance with good engineering practice, the Director may issue instructions to the Owner and/or to the Consulting Engineer to take such steps as the Director deems necessary to procure compliance with the provisions of this Agreement. Such instructions may be written or may be verbal, in which case the Director shall confirm them in writing within forty-eight (48) hours. In the event that neither the Owner nor the Owner's engineer is present at the site of the works to receive such verbal instruction, the Director may require the contractor or contractors or workmen to cease work forthwith and is hereby authorized to order such work to cease.

## 5.6 Incomplete or Faulty Work

In the event that the Director deems that the Earthworks being carried out are not in accordance with the reviewed plans and specifications, or timelines as per Schedules "D", "F", and "G", he may order the contractor to stop further work and the Town may draw upon the securities posted pursuant to Section 3 of this Agreement and secure the site if required for purposes of public safety with proceeds received from such security provided the Director gives seven (7) days' notice in writing requiring the Owner to comply with the reviewed plans and specifications or to proceed with completion of the works.

## 5.7 Acceptance of the Works

Acceptance of the Works is subject to the provisions set forth in this Agreement and any applicable further Subdivision or Pre-Servicing Agreement

## 5.8 Maintenance and Repair of Public Works

The Owner covenants and agrees to maintain all the Works and services as provided for in this Agreement free from defects and to repair and rectify any defect which may occur when required by the Director. Satisfactory completion of the maintenance period shall be in accordance with the provisions of the future Subdivision Agreement.



## 5.9 Approval to Conduct Earthworks

The Owner acknowledges and agrees that the Town's approval to conduct Earthworks of the internal lands is granted to accommodate and assist the Owner. Approval to conduct Earthworks shall not be construed as final approval of the plan of subdivision and the Owner assumes all risks of the Earthworks without final approval of the plan of subdivision.

## 5.10 Working Hours

The working hours are to be solely from 7:00 AM to 7:00 PM Monday to Saturday, and shall comply with the Town's Noise by-Law 2003-0075 (PWE-1) as amended.

# **PART VI FOULING OF ROADWAYS**

The Owner covenants and agrees not to foul the public highways leading to the Lands and further agrees to provide the necessary persons and equipment to be available on a twenty-four (24) hour notice basis at all times to keep public highways, roads and streets leading to the Lands clean, and if, in the opinion of the Director, such roads do not meet with these requirements, then the work shall be done by the Town at the Owner's expense.

# **PART VII CONSTRUCTION ACT**

Upon receiving notice or upon any liens being filed pursuant to the Construction Act which may affect any portion of the subject Lands in this Agreement in which the Town may have an interest, this Agreement shall be deemed to be defaulted by the Owner. Upon discovering such default, the Town may forthwith give the Owner notice in writing of the said lien or claim and the Owner shall be allowed to cure or remedy such default by discharging or vacating the said lien to the satisfaction of the Town within ten (10) days of such notice.

If such default is not remedied or cured as above, the Town may, notwithstanding any other remedies it may have, draw upon any security or Letter of Credit which may be held pursuant to this Agreement to secure its interests and may pay into Court any holdback and costs provided by the Construction Act as may be necessary therefor.

The Owner shall provide a statutory declaration that it has paid all contractors, sub-contractors and consultants associated with the construction of public works and complied fully with the provisions of the *Construction Act*.

# **PART VIII FIRE PROTECTION REQUIREMENTS**

## 8.1 Emergency Access to Lands

The Owner covenants and agrees to provide emergency access to the Lands in such locations as may be required by the Town's Fire Chief.

## 8.2 Open Burning of Materials

The Owner covenants and agrees to comply with the municipal by-law regulating the open burning of materials and obtain the necessary permits from the Town's Fire Department in accordance with By-law 2000-0071 (REG-1).



## **PART IX      GENERAL PROVISIONS**

### **9.1            Inspections by Town Staff**

The Town, by its officers, staff, Peer Review consultants, servants and agents may enter on to the Lands, or parts thereof, and any building(s) erected thereon, to ensure the proper compliance of any works required to be constructed by the Owner.

### **9.2            Qualitative/Quantitative Tests**

The Director may require qualitative or quantitative tests made of all materials which have been or are proposed to be used in the construction of any Works or services required by this Agreement. All testing shall conform to the Ontario Provincial Standard Specifications and the Town's Development Design Criteria, as amended, and the costs of such tests shall be paid by the Owner within fourteen (14) days of the account being rendered by the Town.

### **9.3            Approvals**

The Owner agrees that no work shall be commenced without first obtaining the written approval of the Director and it is understood that any approval(s) given by the Director prior to the registration of the plan shall not be binding upon the Town nor on the Director and any works undertaken by the Owner prior to the registration of the plan shall be at the sole risk of the Owner.

The Owner covenants and agrees to obtain any and all necessary permits and/or approvals from the Town in undertaking any of the Works or related works, including but not limited to, the removal or placement of topsoil on the Lands.

Any approval(s) given by the Town shall be subject to any and all approvals required by any other governmental authority.

Notwithstanding anything herein contained, the Town shall not be obligated under this Agreement until the Town or the Owner have obtained any and all approvals required to be obtained from the Regional Municipality of York and the Lake Simcoe Region Conservation Authority and nothing herein shall relieve the Owner from obtaining all approvals and consents required by any other agencies having jurisdiction.

### **9.4            Trees and Tree Compensation**

The Owner has been granted a Site Alteration Permit for tree removal on the subject Lands. All works regarding tree removal and preservation are strictly coordinated within the Site Alteration Permit and guided by the approved Construction Management and Developer Communication Plan as well as the approved Tree Removal and Preservation Plan.

### **9.5            Construction Management and Developer Communication Plan**

The Owner covenants and agrees to adhere to the Construction Management and Developer Communication Plan as per Schedule "G", attached hereto.

### **9.6            Well Monitoring Program**

The Owner shall adhere to the Well Monitoring Program as per Schedule "H", attached hereto.

## **PART X      ADMINISTRATION**

10.1            The Owner consents to the registration by the Town of this Agreement upon the title of the Lands, at the sole discretion of the Town.

10.2            The Owner shall obtain and register a discharge, consent or postponement of any mortgage or other encumbrance on the Lands, at its expense, with the intent that any prior encumbrances will postpone any right or interest which it may have in the Lands, so that this Agreement shall take effect as though executed and registered prior to the creation of such right or interest of such party. Any such discharge, consent or postponement shall be in form and substance satisfactory to the Town's Solicitor, and shall be provided prior to the execution of this Agreement by the Town.

10.3            The Owner shall pay all of the Town's costs with respect to the preparation, review, and registration of this Agreement and any other required documents, including but not limited to any applicable sub-search, execution search and registration fees.

10.4            It is declared and agreed that this Agreement and the covenants contained herein and the Schedules attached hereto shall enure to the benefit of the Town and is binding upon the respective successors and assigns of the Owner.

10.5            Notwithstanding anything herein contained, the Town shall not be obligated under this Agreement until the Owner has obtained all approvals required to be obtained from York Region and the Lake Simcoe Region Conservation Authority, and nothing herein shall relieve the Owner from obtaining all approvals required by any governmental authority.

## **PART XI      ADDRESS OF THE TOWN, OWNER, AND ENGINEER**

All notices, demands or requests provided for or permitted to be given pursuant to this agreement shall be made in writing as follows:

### **Town**

If made to the Town, it shall be addressed to:

The Corporation of the Town of Georgina  
26557 Civic Centre Road  
Keswick, Ontario L4P 3G1

Attention: Rachel Dillabough, Town Clerk

Phone: (905) 476-4301 / Fax: (905) 476-1475

### **Owner**

If made to the Owner, it shall be addressed to:

ORCHIDTRAIL BUILDING (BT) CORP

Address

Attention:

Phone:

### **Engineer**

If made to the consultant, it shall be addressed to:

Name

Address

Attention:

Phone:

or such other address of which the Owner and/or Engineer has notified the Director in writing. All notices, demands or requests shall be deemed to have been properly given if delivered personally or sent by prepaid mail. If notice is given by mail, the

same shall be effective five (5) business days after being deposited with the postal office.

## **PART XII INTERPRETATION**

12.1 This Agreement is to be read with all changes in gender or number as required by the context.

12.2 All obligations herein contained, although not expressed to be covenants, shall be deemed to be covenants.

12.3 The part numbers and headings, sub-headings and section, subsection, clause and paragraph numbers are inserted for convenience of reference only and shall not affect the construction or interpretation of this Agreement.

## **PART XIII GOVERNING LAW**

This Agreement shall be interpreted under and is governed by the laws of the Province of Ontario.

## **PART XIV LIST OF SCHEDULES**

The following schedules are attached hereto and form part of this Agreement.

- 14.1 Schedule "A"  
Being a Description of the Lands Subject of this Agreement
- 14.2 Schedules "B"  
Being the Solicitor's Certificate of Ownership
- 14.3 Schedule "C"  
Being the Plan of Subdivision
- 14.4 Schedule "D"  
Being the Earthworks to be constructed by the Owner
- 14.5 Schedule "E"  
Being the Summary of Payments and Securities
- 14.6 Schedule "F"  
Being the approved earthworks drawings
- 14.7 Schedule "G"  
Being the approved Construction Management and Developer Communication Plan (CMDCP)
- 14.8 Schedule "H"  
Being the approved Well Monitoring Program
- 14.9 Schedule "I"  
Being the Construction Access Agreement

IT IS HEREBY DECLARED that this agreement and the covenants, provisos, conditions and schedules herein contained shall be binding upon and enure to the benefit of the parties hereto, their successors and assigns.

WHENEVER the singular and masculine are used throughout this agreement, the same shall be construed as meaning the plural or feminine or neuter where the context of the parties hereto require.



SCHEDULE “A”

**DESCRIPTION OF THE LANDS SUBJECT OF THIS AGREEMENT**

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THOSE CERTAIN LANDS situate in the Town of Georgina (formerly the geographic Township of North Gwillimbury), in the Regional Municipality of York and being composed of the following:

Legal Description:

DRAFT

SCHEDULE "B"

SOLICITOR'S CERTIFICATE OF OWNERSHIP

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To be provided by Owner

DRAFT



SCHEDULE "C"

DRAFT PLAN OF SUBDIVISION

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To be provided by Owner

DRAFT

## SCHEDULE "D"

### EARTHWORKS TO BE CONSTRUCTED BY THE OWNER

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Design and construction of the work described herein shall be in accordance with the reviewed engineering drawings as prepared by (Consultants) for the development. The signature of the Director or his/her designate on the drawings shall signify such review.

DRAFT

## SCHEDULE "E"

### SUMMARY OF PAYMENTS AND SECURITIES

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The Owner agrees to pay to the Town the following amounts and provide the following payments and securities:

#### **PAYMENTS:**

1. The Owner agrees that it shall pay an amount of 1.0% of the value of the completed subdivision works and services to be constructed by the Owner, as estimated by the Owner's Engineer and confirmed by the Director, as per By-law 2018-0074, as amended.
2. The Owner agrees that they shall pay \$7,843.00 for the Preparation of Subdivision Agreement as per By-law 2018-0074, as amended.

#### **SECURITIES:**

1. Prior to the execution of this Agreement by the Town, the Owner shall provide to the Town, in a form and content satisfactory to the Town solicitor, an irrevocable Letter of Credit from a Canadian Chartered Bank or a cash deposit in the amount of \$100,000.00 as site improvement guarantee and as a road fouling deposit.

SCHEDULE "F"

**APPROVED EARTHWORKS DRAWINGS**  
CONSTRUCTION MANAGEMENT PLAN,

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DRAFT

SCHEDULE "G"

**APPROVED CONSTRUCTION MANAGEMENT AND DEVELOPMENT PLAN**

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