

MUNICIPAL LAND USE AND MAINTENANCE AGREEMENT

THIS AGREEMENT made this 5th day of January, 2021

BETWEEN:

NICOLAS TENSEN & SARAH STRUB
(hereinafter collectively referred to as the "Owner")

And

THE CORPORATION OF THE TOWN OF THE BLUE MOUNTAINS
(hereinafter referred to as the "Town")

WHEREAS the Owner is the registered owner of the lands described in Schedule "A" to this Agreement (the "Owner's Lands"), and as shown as "Owner's Lands" on the map as attached at Schedule "A";

AND WHEREAS the Town is the owner of the lands (the "Town Lands"), being a seasonal road which is not maintained by the Town, also known as a portion of Scandia Lane, and as shown as the "Town Lands" on the map as attached at Schedule "A";

AND WHEREAS the Owner's Lands front onto the Town Lands and the Owner wishes to obtain a building permit and construct and occupy a single detached dwelling;

AND WHEREAS the Town requires that prior to the issuance of a municipal entrance permit or building permit a property must front onto municipally assumed and maintained public highways;

AND WHEREAS the Owner has applied for and been granted a Zoning By-law Amendment to permit the construction of a single detached dwelling on the Owner's Lands subject to conditions;

AND WHEREAS one of the conditions of the Zoning By-law Amendment is that the Owner enters into an Agreement with the Town with respect to the use of the Town Lands for access to the Owner's Lands.

AND WHEREAS the Town has granted permission for the Owner to use the Town Lands to access the Owner's Lands subject to the terms and conditions set out in this Agreement.

NOW THEREFORE THIS AGREEMENT WITNESSETH THAT in consideration of the mutual covenants hereinafter expressed and the sum of ten dollars (\$10.00) of lawful money of Canada now paid by each of the Parties hereto to the other, the Parties hereto covenant, promise and agree with each other as follows:

1. Definitions

- a. **"Emergency Services"** means Fire, Police and Emergency Medical Services;
- b. **"Municipal Services"** means the provision of municipal water services, municipal sanitary sewer services, stormwater sewer service, and garbage and waste collection;
- c. **"Winter Maintenance"** means snowplowing, snow-blowing, salting, sanding, or any other maintenance, service or operations which otherwise would be required as a result of snow, sleet, rain, ice or other winter weather or road conditions during the Winter Maintenance Period;

- d. **"Winter Maintenance Period"** means November 1st of one year to April 15th of the following year.

2. Administration of Agreement

- a. This Agreement shall be administered on behalf of the Town by the Town's Director of Operations, or their designate, unless another Town official is specifically referred to in this Agreement or if advised otherwise by the Town in writing.

3. Use of the Town Lands

- a. Subject to the terms and conditions set out in this Agreement, the Town consents to the non-exclusive use of the Town Lands by the Owner for access to the Owner's Lands.
- b. The Owner acknowledges and agrees that they shall not be entitled to use, alter, encumber or otherwise interfere with the Town Lands except as specifically outlined in this Agreement.

4. Applicable Laws

- a. The Owner shall at all times comply with all laws, statutes, by-laws, regulations, ordinances, orders and requirements of the Town and all other government authorities having jurisdiction over the Owner's Lands and Town Lands, and nothing in this Agreement shall relieve the Owner from compliance with any and all applicable laws.

5. Seasonal Road

- a. The Owner acknowledges and agrees that the Owner's Lands front onto a seasonal road that is not maintained by the Town during the Winter Maintenance Period.
- b. The Owner further acknowledges and agrees that the Town does not and is not required to perform Winter Maintenance on the Town Lands.

6. Municipal Services

- a. The Owner acknowledges and agrees that Municipal Services, including Winter Maintenance, are not available to the Town Lands or Owner's Lands.
- b. The Owner acknowledges and agrees that garbage and waste collection are not available at the Owner's Lands and the Owner is required to obtain a Municipal Land Use Permit to place garbage and waste collection bins at the appropriate location identified by the Town.

7. Emergency Services

- a. The Owner acknowledges and agrees that Emergency Services may not be available at the Owner's Lands at any time, and the Town shall not be required to facilitate or provide for any Emergency Services to the Owners Lands.
- b. The Owner agrees that the Town shall not be held liable for the lack of Emergency Services available on the Town Lands or Owners Lands.
- c. The Owner acknowledges and agrees that the provision of Emergency Services may be impacted by the lack of Winter Maintenance on the Town Lands and to the Owner's Lands

and may be additionally impacted by the seasonality and unmaintained nature of the Town Lands.

- d. The Owner shall post a Notice, with form and content satisfactory to the Town, in a visible and conspicuous location to those outside and approaching the dwelling. The content of the Notice shall advise inhabitants and guests of the dwelling that provision of Emergency Services may not be available at the Owners Lands.

8. Signage

- a. The Owner agrees to install new or additional signage on the Town Lands or the Owners Lands at the request of the Town and at the Owners expense.

9. Building Permits

- a. The Owner covenants and agrees that they shall not be entitled to any building permit(s) on the Owners Lands that may be necessary now or in the future unless this Agreement, or a replacement Agreement is executed, in force, and registered on title to the Owners Lands.

10. Road Maintenance

- a. Both parties acknowledge that the Owner's Lands front onto and are accessed by the Town Lands and the Town Lands are an unmaintained seasonal road and that the Town shall not undertake any Winter Maintenance on the Town Lands.
- b. The Parties further agree that all future Winter Maintenance necessary to provide access on, over, through and along the Town Lands for access to the Owner's Lands shall be the sole responsibility of the Owner, and the Owner agrees that the Town shall not accept or bear any responsibility for the Winter Maintenance so as to provide access on, over, through and along the Town Lands to the Owner's Lands.
- c. The Owner agrees that any act of summer road maintenance completed by or funds extended by the Town on the Town Lands or Owner's Lands shall not be construed as acts of full maintenance assumption by the Town.
- d. The Owner further agrees not to request that the Town assume full maintenance of the Town Lands from the Council of The Corporation of the Town of The Blue Mountains, and acknowledges that the Town has no obligation, now or in the future, to assume full responsibility and Winter Maintenance of the Town Lands.
- e. The Owner agrees that any Winter Maintenance of the Town Lands that is or may be required to enable or permit access to the Owners Lands shall be undertaken by the Owner and the Owner shall bear sole and absolute responsibility and liability for said maintenance.
- f. The Owner covenants and agrees that if any Winter Maintenance undertaken by the Owner damages the Town Lands the Owner shall rectify the damage to the satisfaction of the Town within 30 days of the being given Notice by the Town that rectification or repair is required. If the Owner fails to rectify the damage within 30 days, the Town may be do so and charge the cost doing so, plus an administrative fee of 15% of the total cost of repair, to the Owner. The Owner shall reimburse the Town the cost of such repairs within 15 days of being given Notice of a requirement to pay. If the Owner fails to pay in

accordance with this Section, the Town may take any and all actions or remedies available to it under the *Municipal Act*.

11. Indemnity

- a. The Owner covenants and agrees not to pursue any claim or action against the Town, or any Emergency Services provider, with regard to Winter Maintenance, Municipal Services or Emergency Services in any manner, shape or form arising out of the access to the Owner's Lands via the Town Lands; the terms and conditions of this Agreement; the Zoning By-law amendment as described in this Agreement; or the provision of a Municipal Entrance Permit or Building Permit with respect to the Owner's Lands.
- b. The Owner shall indemnify and save completely harmless the Town and its elected officials, officers, agents, contractors and employees from and against all actions, causes of actions, suits, claims and demands whatsoever which may arise directly or indirectly or in any way connected with the terms of this Agreement or the use of the Town Lands or Owner's Lands by any person. Use of the Town Lands shall include, without limitation, the use by any person of the Town Lands in any form whatsoever and shall include the provision of any winter maintenance provided by the Owner, or any lack of Emergency Services available on the Town Lands and the Owners Lands..
- c. The Owner further agrees to indemnify and save harmless the Town and its elected officials, officers, agents, contractors and employees from and against all actions, causes of actions, suits, claims and demands whatsoever which may arise directly or indirectly from the use of the Town Lands by any person on account of Winter Maintenance or lack thereof, the provision of Municipal Services or lack thereof, and the provision of Emergency Services or lack thereof.
- d. For greater clarity the Owners obligation to indemnify the Town shall include the obligation to pay the Town's legal costs and damages that may arise out of any claim, suit, or cause of action related to the use of the Town Lands and Owner's Lands as contemplated in this Agreement.

12. Insurance

- a. The Owner shall take out and keep in full force and effect so long as the Town Lands are used for access to the Owner's Lands during the Winter Maintenance Period, at its sole cost and expense, liability insurance which shall include coverage for bodily injury liability and property damage liability arising out of the use, repair and maintenance of the Town Lands and Owner's Lands by any person. This policy shall be written with limits of not less than Five Million Dollars (\$5,000,000) exclusive of interest and costs, per occurrence and shall include the Town as an additional insured.
- b. This policy shall not be terminated, cancelled or materially altered unless written notice, by registered mail, of such termination, cancellation or material alteration is given by the insurers to the Town at least sixty (60) days before the effective date of such change or cancellation.
- c. In the event the policy is changed, cancelled or materially altered without the express written consent of the Town, this Agreement shall be immediately terminated and the Owner acknowledges and agrees that they shall have no further right to access, travel on,

over or through the Town Lands during the Winter Maintenance Period, whether or not Notice of such termination has been given to the Owner.

- d. The herein insurance requirements may be reviewed from time to time by the Town and the Town may, at its sole and absolute discretion change or increase the required the insurance and the Owner shall obtain such insurance within 30 days of being required to do so by the Town; failure to do so shall result in the immediate termination of this Agreement.

13. Notice

- a. If any notice is required to be given by the Town to the Owner with respect to this Agreement, such notice shall be mailed, delivered or emailed to the Owner at the addresses shown on Schedule "B", or such other address(es) of which the Owner has notified the Town, in writing, or such address as the Town has in its Tax Roll; any notice mailed, delivered or emailed under the terms of this Agreement shall be deemed to be good and sufficient notice on the 5th business day after being mailed, or immediately if personally delivered.
- b. If any notice is required to be given by the Owner to the Town with respect to this Agreement, such notice shall be mailed, delivered or sent by email to:

Director of Operations
The Corporation of the Town of The Blue Mountains
32 Mill St. Box 310
Thornbury, ON.
N0H2P0
Email: directorops@thebluemountains.ca

Or other such address of which the Town has notified the Owners, in writing, and any Notice mailed, delivered or emailed shall be deemed good and sufficient notice.

- c. For the purposes of this section, Email notice shall be deemed good and sufficient only if its receipt is acknowledged by the recipient.

14. Term

- a. This Agreement shall be valid for a period of five (5) years (the "Term") after which time the provisions of this Agreement may be reviewed or renewed for a further term as defined by the Town and the Town reserves the right to refuse to renew this Agreement.
- b. The Owner acknowledges that if the Town terminates this Agreement or refuses to renew this Agreement the Owner shall not seek and the Town shall not be liable for any damages, claims, suits or liability whatsoever related to the refusal to renew or termination of the Agreement.

15. Termination

- a. In the event the Owner fails to fulfill any obligation under this Agreement, the Town may, at its sole and absolute discretion, terminate this Agreement on ten (10) business days' Notice to the Owner.

- b. In the event that other parties, whose property fronts onto the Town Lands in the vicinity of the Owners Lands, are required to enter into a Municipal Land Use and Maintenance Agreement, the Owner agrees that the Town may require that the Owner enter into a new or revised Municipal Land Use and Maintenance Agreement which may include other parties and that upon execution of such an Agreement this Agreement and all its terms and conditions shall be terminated, null and void. The Owner agrees that the failure or refusal of the Owner to execute a replacement agreement when required by the Town may result in the termination of this Agreement at the sole and absolute discretion of the Town.

16. Annual Fee

- a. The Owner agrees to pay to the Town an annual fee of five-hundred dollars (\$500.00) ("Fee") for the administration of this Agreement. The Fee shall be payable on the first day of each calendar year in which this Agreement is in force.

17. Registration of Agreement

- a. The Owner hereby agrees that this Agreement will be registered upon title to the Owner's Lands and the Owner hereby authorizes the Town Solicitor or their designate to execute on behalf of the Owner all documents necessary to register this Agreement in the Land Registry Office. The Owner further covenants and agrees to pay to the Town the cost of registration of this Agreement as well as any further costs incurred by the Town as a result of the registration of any other documents pertaining to this Agreement.

18. Notice and Warning Clauses

- a. The Owner covenants and agrees that in the event that the Owners Lands are sold or transferred they will advise the transferee as part of any Agreement of Purchase and Sale or transfer documents that the Owners Lands and Town Lands are not provided with Winter Maintenance or Municipal Services, and Emergency Services may not be available at the Owners Lands or Town Lands.

19. Building Permits

- a. The Owner covenants and agrees that they will not be entitled to any Building Permits on the Owners Lands unless this Agreement is executed and in good standing.
- b. The Owner further covenants and Agrees to advise any potential purchaser or transferee, within any Agreement of Purchase and Sale and otherwise in writing in respect of any transfer, that no building permits shall be issued for the Owners Lands or any other lot which fronts on the Town Lands unless the owner of the Owners Lands or lot fronting on the Town Lands has executed a Municipal Land Use and Maintenance Agreement in a form satisfactory to the Town.

20. Enforcement

- a. The Owner acknowledges that the Town, in addition to any other remedy it may have at law, shall also be entitled to enforce this Agreement in accordance with the provisions of the Municipal Act.

21. Waiver and Severability

- a. The failure of the Town at any time to require performance by the Owner of any obligation under this Agreement shall in no way affect its right thereafter to enforce such obligation, nor shall be waiver by the Town of the performance of any obligation hereunder be taken or be held to be a waiver of the performance of the same or any other obligation hereunder at any later time. The Town shall specifically retain its right at law to enforce this Agreement.
- b. The Parties hereby agree that in the event any part of this Agreement is declared null and void by a Court of competent jurisdiction, the remainder of the Agreement shall remain in force and effect.

22. Extension of Time

- a. Time shall always be of the essence of this Agreement. Any time limits specified in this Agreement may be extended with the consent in writing of both the Owner and the Town, 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.

23. Governing Law

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

24. Schedules

- a. The following schedules are attached hereto and form part of this Agreement:
 - i. Schedule A: Description of the Lands
 - ii. Schedule B: Address for Notice

25. Successors and Assigns

- a. This Agreement and everything herein contained shall enure to the benefit of and be binding upon the parties hereto and their successors and assigns.

IN WITNESS WHEREOF the Parties hereto have hereunto affixed their signatures or corporate seals duly attested to by their proper signing officers in that behalf.

Name: _____

Owner _____

Shawn Carey, Director of Operations, Town of The Blue Mountains

Nicolas Teisen

Sarah Strub





Town of The Blue Mountains

Schedule "A"

