

THE CORPORATION OF THE TOWN OF ORANGEVILLE

By-Law 5-88

A by-law to authorize The Corporation of the Town of Orangeville to enter into a Site Plan Agreement with Grant Bartlett and Shirley Bartlett


The following is some of the background upon which this by-law is based.


- (a) Grant Bartlett and Shirley Bartlett (hereinafter referred to as "the owners") are the registered and beneficial owners of all of Lot 2 and part of Lot 3 Block 3 Plan 212 Town of Orangeville, County of Dufferin shown as part 1 on reference plan 7R-2753 which land is hereinafter referred to as "the property".
- (b) The property is zoned C5(D) Restricted Commercial/ Residential Holding Zone. The Owners have requested the Town to re-zone the property to C5 Restricted Commercial/ Residential Zone. The Owners have agreed to enter into a Site Plan Agreement with the Town as part of their request.
- (c) The Owners and the Town have agreed that the proposed site plan agreement shall be in substantially the same form as the agreement that forms Schedule "A" hereto. This by-law is to authorize the Head of Council and the Clerk to sign such agreement on behalf of the Town.

The Corporation of the Town of Orangeville by its Municipal Council enacts as follows:

1. The Head of Council and Clerk are hereby authorized to execute an agreement with Grant Bartlett and Shirley Bartlett in the same form or substantially the same form as the agreement that forms Schedule "A" hereto and to impress the corporate seal thereto.

Passed in open council this 4TH day of JANUARY, 1988.


Clerk


Head of Council

By-Law read a first and second time this 4TH day of JANUARY, 1988.

By-Law read a third time this 4TH day of JANUARY, 1988.

THE CORPORATION OF THE TOWN OF ORANGEVILLE

By-Law _____

Schedule "A"

This agreement is entered into

B E T W E E N

GRANT BARTLETT and SHIRLEY BARTLETT

herein referred to as the Owners

-and-

THE CORPORATION OF THE TOWN OF ORANGEVILLE

herein referred to as the Town

-and-

STERLING TRUST COMPANY

herein referred to as the Mortgagee

Background

1. The following are some of the facts upon which this agreement is based.
 - (a) The Owners are the registered and beneficial owners of all of lot 2 and part of lot 3 Block 3 Plan 212, Town of Orangeville, County of Dufferin shown as part 1 on reference plan 7R-2753 and of the building located thereon, which land and building is hereinafter referred to as "the property".
 - (b) The property is zoned C5(D) which is a Restricted Commercial/Residential Holding Zone. The Owners have requested the Town to remove the holding zone from the property so that it will be zoned to C5 Restricted Development/Residential Zone.
 - (c) The Town has agreed to remove the C5(D) zoning on the condition that the Owners enter into this site plan agreement. The Owners have agreed to do so.
 - (e) The mortgagee is joining in this agreement to postpone its interest in the mortgage that it holds on the property to the terms of this agreement.

Approval of Site Plan

2. The Town approves the plan to develop the property submitted to it by the Owners. A reduced copy of the plans form Schedule "A" to this agreement. Schedule "A" is hereinafter referred to as "the plan" or "the said plan".
3. The Owners agree to develop the property in conformity to both the plan and the text contained in the plan.
4. The Owners acknowledge that the Town, by approving the site plan, and entering into this agreement, does not relieve the Owners from the requirement of obtaining
 - (a) any permit that may be required from Credit Valley Conservation Authority or any other conservation authority;
 - (b) any building permit that may be required by the Chief Building Official of the County of Dufferin;

- (c) or any permit or licence that may be required by any other agency including any provincially appointed regulatory body

before the proposed development can proceed.

- 5. Any release given by the Town from the terms of this agreement is a release from the matters that are of interest to the Town and is not to be construed as a release from any other such authority, officer or agency.

Minor Alterations

- 6. The Town may permit minor alterations in the plan and any work done in conformity with any such alterations shall be deemed to be in compliance with this Agreement.

Maintenance

- 7. The Owners shall:

- (a) complete the works and other facilities required in the plan and this Agreement at their expense and to the satisfaction of the Town;
- (b) maintain those works and facilities located on the property to the satisfaction of the Town at the sole risk and expense of the owners; and
- (c) at all time in the future, remove snow and ice from access ramps and driveways, parking areas, loading areas and walkways.

- 8. Without limiting the generality of paragraph 7(b), the Owners shall

- (a) maintain all hedges, trees, shrubs, and other ground cover in a healthy state;
- (b) keep any works and facilities shown on the plan with respect to landscaping in good repair; and
- (c) refrain from doing anything that will have a detrimental effect on the adjoining property.

Any diseased hedge, tree, shrub or other ground cover or damaged facility for the landscaping of the lands shall be replaced as soon as is practicable in accordance with good horticultural practices.

- 9. With respect to paragraph 7(c), the Town acknowledges that it is impossible for the Owners to completely remove all snow and ice. The intention of paragraph 7(c) is to protect people and property and to give easy access to and from the property. The Owners are required to remove such snow and ice, do such salting and sanding, and do such other reasonable winter maintenance as is required from time to time to give such protection and access.
- 10. The Owners agree to maintain the property pursuant to the plan and the text of the plan.
- 11. If the Owners fail to maintain the property in the manner required by this agreement, the plan, and the text of the plan, the Town may direct that the Owners remedy such failure. If the Owners refuse or neglect to remedy such failure, the Town may itself remedy such failure at the Owner's expense. The Town may recover such expense plus interest thereon by action or in the same manner as it recovers municipal taxes.

12. The Owners must obtain a building permit to do the work required by this agreement within one year from the date of the signing of this agreement by all parties. If the Owners fail to do so, this agreement is automatically terminated at the end of the said year and this agreement shall be null and void.
13. If the Owners have taken out a building permit but have not completed construction within two years of the date of the permit, this agreement is automatically terminated and is null and void.
14. If this agreement is automatically terminated, the Town is deemed to have withdrawn its consent to the proposed development and no further work shall be done on the property until the Owners have entered into a further site plan agreement. No liability or other duty of any kind shall be imposed on the Town requiring it to carry out any part of this agreement that it is required to carry out herein that has not been completed at the time of termination. The Town is under no obligation to return any money paid under this agreement. All money owing to the Town by the Owners to the date of termination will be paid forthwith on demand.
15. Notwithstanding anything contained herein to the contrary, if the Owners are delayed in substantially completing the construction of any work or facility required by this Agreement by any act beyond the Owner's reasonable control and without limiting the generality of the foregoing including unavailability of a building permit, adverse weather conditions, labour disputes, strikes and lockouts, national shortages, acts of God or the Queen's enemies, riots, insurrection or damage by fire, lightning or tempest, the time for completion shall be extended by a period of time equal to such delay.

Stop Work Orders

16. Upon any breach of this Agreement, the determination of which shall be within the sole discretion of the Town, the Town may upon giving 4 days' notice in writing to the Owner stop all work in progress until such breach has been rectified.

Municipal Expenses

17. The Owners shall pay to the Town the costs that it incurs for all outside technical and professional expenses that it has incurred to date and which it will incur in the future arising out of the proposed development. These expenses do not include internal administrative technical or professional services rendered by full time employed staff. The deposit that the Owner has paid with the application to the Town will be credited to these expenses. If the deposit is too large, the unused portion will be refunded. If it is too small, an additional deposit will be sought. Any additional deposit demanded and not paid will bear interest from the date of demand at the same rate as is provided in the Courts of Justice Act S.O. 1984 chapter 11.

Registration of Agreement

18. The Owners agree that this agreement with its schedules and any amendments may be registered upon the title to the land and 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.

Certificate of Compliance

19. When the work contemplated by this agreement has been completed the following procedure will be followed.
- (a) The Owners will notify the Town that the work is completed.
 - (b) The Owners, and the Town, or their respective designated appointees will inspect the work.
 - (c) The Town will deliver to the Owners a list of any deficiencies to be corrected.
 - (d) The Owners will correct such deficiencies as soon as is practicable and the steps outlined in (a) (b) and (c) will be repeated.
 - (e) If there are no deficiencies to be corrected, or when all deficiencies have been corrected the Planner of the Town will certify to the Chief Administrative Officer by letter that the work has been completed as required by this agreement.
 - (f) If the Chief Administrative Officer is satisfied that all other matters required by this agreement have been satisfied, the Clerk will issue a Certificate of Compliance to the Owner in the form outlined in Schedule "B" hereto which certificate may be registered upon the title to the property.

The signing of the certificate by the Clerk of the Town or the person purporting to be the Clerk of the Town when impressed by the corporate seal of the Town shall be deemed to be proof of all matters contained in the certificate.

20. The Certificate of Compliance will have the effect of releasing the Owners and the property from the terms of this agreement except those terms requiring the Owners to maintain the property and except for any other matters referred to in the Certificate.

Arbitration

21. If a dispute develops between the Town and the Owner as to whether an item is or is not a deficiency, or as to whether or not the Clerk should grant a Certificate of Compliance such dispute or disputes shall be resolved by arbitration.

For the purpose of this part of the agreement the Owner and the Town are collectively called "the Parties". Each of them is called "the Party" as the context requires.

Any arbitration shall be resolved in the following manner.

- (a) If the parties can agree upon a single arbitrator, such arbitrator shall conduct the arbitration alone. If they cannot agree on a single arbitrator, then each will appoint an arbitrator and the two so appointed will appoint a third arbitrator who shall be chairman. If either party appoints an arbitrator and gives notice of the appointment to the other, the other must appoint an arbitrator within five business days. If such appointment is not made within such period, the arbitrator appointed by the first party will be deemed to be a single arbitrator approved by the both of them. The two arbitrators will appoint a third arbitrator within five business days of the appointment of the second arbitrator.

- (b) The arbitrator or arbitrators shall set a date for the hearing of the matters in dispute not later than eight weeks from the date of appointment of the last arbitrator to be appointed.
- (c) The party seeking the arbitration shall deliver to the arbitrator or arbitrators and the other party, at least four weeks before the hearing, a statement of the matters the party is complaining about.
- (d) The other party to the arbitration shall deliver a statement to the arbitrators and the party seeking the arbitration its position with respect to the matters complained about, at least two weeks before the hearing.
- (e) The time limits referred to above may be waived by the party who has not received any document he should have received and the arbitration may proceed in the absence of any document if failure to deliver it is waived. If a document is not delivered and any party is taken by surprise as a result, the arbitration may be adjourned at any stage and the unnecessary costs incurred may be assessed against the party failing to deliver it.
- (f) At the hearing each party may adduce whatever evidence it deems advisable. In addition the arbitrator or arbitrators shall view the site of the matters complained about.
- (g) The arbitrator or arbitrators shall make their decision as soon as possible after completion of the hearing and viewing the site. The decision (or the majority decision as the case may be) is final and is not to be subject to review or appeal by any Court or other body.
- (h) If the result of the arbitration is in favour, or largely in favour of one party, the cost of the arbitration, including the expenses of that party, will be paid by the other. If the result is mixed, each party will pay its own expenses and the fees of the arbitrators will be divided equally between them. The arbitrator or arbitrators shall make the decision as to whether the result is in favour or largely in favour of one party, or if the result is mixed.

Mortgagee's Covenants

- 22. The Mortgagee hereby postpones its interest as Mortgagee under a mortgage registered on the 26th day of June 1986 as Number 136961 to the terms of this Agreement.
- 23. The Mortgagee shall not be required, in its capacity as mortgagee
 - (a) to install any works and services that have not been installed by the Owners,
 - (b) to complete the installation of any works and services that the Owners have started to install, but not completed, or
 - (c) to correct any deficiencies in works and services improperly installed by the Owners.

General

Default

24. If there is default in any of the terms of this agreement the provisions of Section 325 of the Municipal Act, R.S.O. 1980, Chapter 302 as it was written on the date of the signing of this agreement shall apply with respect to such default.

Notices

25. Any notice required or permitted to be given under this agreement shall be in writing and may be served either personally or by mailing such notice by registered mail postage prepaid or if the postal service has been disrupted for any reason, by delivering such notice by a prepaid courier service as follows:

Grant Bartlett
Shirley Bartlett,
28 Forest Park Road,
Orangeville, Ontario.
L9W 1A3.

The Corporation of the Town of Orangeville,
c/o The Head of Council or the
Chief Administrative Officer,
87 Broadway,
Orangeville, Ontario.
L9W 1K1.

Sterling Trust Corporation,
220 Bay Street,
Toronto, Ontario.
M5J 2K8.

Mtg. Loan #07848

If any notice is mailed by registered mail, postage prepaid or sent by prepaid courier service as aforesaid, it shall be deemed to have been received by the party to whom it was mailed or sent on the second day following the day upon which it was received by one of Her Majesty's post offices or delivered to the courier service unless the second day ends on a Saturday, Sunday or legal holiday, in which case those days are not included in computing the two day period. Either party may, by notice to the other, designate another address in Canada to which notices mailed or delivered more than ten (10) days thereafter shall be addressed.

Agreement Runs with Land

26. This agreement shall enure 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 Owners and their heirs, executors, administrators, successors and assigns.

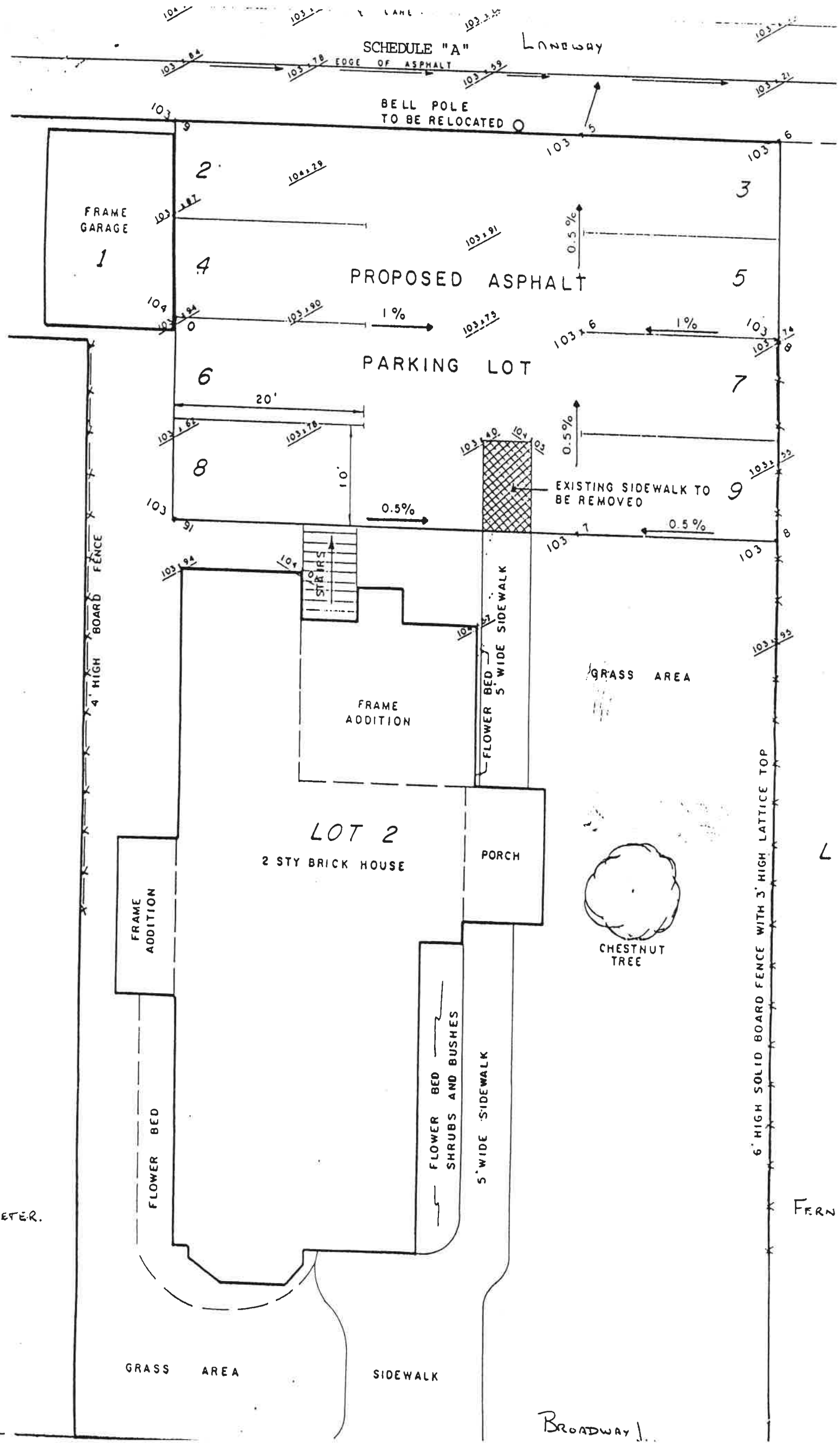
This agreement is also binding upon the Mortgagee and its successors and assigns.

27. 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 Town has signed this agreement this day of 198 , the Owner Grant Bartlett has signed this agreement this day of , 198 , the Owner Shirley Bartlett has signed this agreement this day of , 198 , and the Mortgagee has signed this agreement this day of , 198 .

Signed and Delivered
in the presence of

)
)
) Grant Bartlett
)
)
) Shirley Bartlett
)
) The Corporation of the Town
) of Orangeville
)
) Per _____
) Head of Council
)
) Per _____
) Clerk
)
) Sterling Trust Corporation
)
) Per _____
)
)



Schedule "B"

This certificate is issued pursuant to an agreement

B E T W E E N:

THE CORPORATION OF THE TOWN
OF ORANGEVILLE

herein referred to as "the Town"

-and-

GRANT BARTLETT and
SHIRLEY BARTLETT

herein referred to as "the Owners"

Certificate of Compliance

1. The following are some of the facts based upon which this certificate is issued.

- (a) The Town and the Owners have entered into an agreement (hereinafter referred to as "the agreement") with respect to Lot 2 and part of Lot 3 Block 3 Plan 212 Town of Orangeville, County of Dufferin shown as part 1 on reference plan 7R-2753 which agreement was registered in the Registry Office for the Registry Division of Dufferin (No. 7) on the day of 1987 as number
- (b) Pursuant to the terms of the agreement, the Owner has applied for a Certificate of Compliance.
- (c) The Town is satisfied that the work contemplated by the agreement has been satisfactorily completed and that all deficiencies have been corrected.
- (d) The Owner has complied with all other terms of the agreement that must be satisfied prior to the issuing of this certificate.

2. The Town hereby certifies that all work that is required to be done by the agreement prior to the issuance of this certificate has been completed and certifies that the Owner has satisfied all other obligations that are required to fulfill the granting of this certificate.

3. The Town hereby releases the property and the Owner from future compliance with the agreement except for the following matters:

- (a) those terms of the agreement respecting maintenance of the property;

4. The signing and delivery of this certificate by the Clerk of the Town is deemed to be proof of all matters contained herein.

5. This Certificate is issued as of the day of 1987.

Clerk Town of Orangeville