



THE CORPORATION OF THE TOWN OF HUNTSVILLE
Development Services

PRE-APPROVED DETACHED SECONDARY RESIDENTIAL DWELLING UNITS
MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (“**MOU**”) is made and entered into by and between The Corporation of the Town of Huntsville (the “**Town**”) and _____, a _____ (“the **Designer**”).

RECITALS

WHEREAS, to provide resources assisting homeowners with permitting of secondary residential dwelling units (SRDUs), the Town has developed a program to pre-approve certain selected SRDU construction plans, subject to site-specific permit and inspection requirements of the *Building Code Act, 1992* (the “**BCA**”); and

WHEREAS, the Town invited designers and builders to submit SRDU designs that fulfill certain criteria as described on the Town’s website; and

WHEREAS, the Designer submitted its SRDU plan for consideration by the Town’s Chief Building Official to assess suitability for inclusion in building permit applications; and

WHEREAS, the Chief Building Official reviewed the Designer’s plan and the Designer would like to participate in the Town’s pre-approved Secondary Residential Dwelling Unit Deployment Initiative.

NOW THEREFORE, in consideration of the mutual terms, conditions, obligations and covenants contained herein, the sufficiency of which is hereby irrevocably acknowledged, the Town and Designer mutually agree as follows:

MOU

1. TERM OF THE MEMORANDUM OF UNDERSTANDING

This MOU shall become effective on the date it is last signed by an authorized representative of each party and shall remain in effect for a period of two (2) years.

Following the initial two-year term, this MOU may be extended on an annual basis upon mutual written agreement of both parties..

This MOU may be terminated in any of the following ways:

- By mutual written consent of both parties;
- Automatically, if the Town suspends the SRDU deployment initiative;
- By the Designer, with 30 days’ written notice, only in the event of extraordinary circumstances that materially affect the Designer’s ability to fulfill its obligations

under this MOU. Such explanation must include a written explanation of the circumstances and be subject to review and acceptance by the Town.

Upon termination, the Town shall retain the right to use the drawings and materials produced under this MOU without limitation subject to the terms of this agreement.

2. PROGRAM REQUIREMENTS

a. Submission of Full Permit Ready Plans

The Designer must submit to the Town a full permit-ready plan set, as described on the Town's website. The full permit-ready plan will be reviewed for general compliance with the Ontario Building Code and suitability to be published on the Town's website as a resource for homeowners. The Designer acknowledges that plan pre-approval relates only to apparent suitability of a plan for use in future building permits and (i) does not involve a representations that the use of the plan for any particular site will comply with the Building Code, *BCA* or other applicable statutes, regulations or by-laws (collectively "**Applicable Law**"); (ii) does not entitle any person to a building permit or affect any right or obligation under the *BCA* or other Applicable Law; and (iii) does not constitute a decision of the CBO made under the *BCA*. The use of the plan in construction will require the property owner to separately comply with all Applicable Law, including, without limitation, obtaining a building permit.

b. Online Gallery

Pre-approved designs will be showcased in an online gallery on the Town's website during the term of this agreement, with images of the SRDU, a description of the plan, and information about its designer. Members of the public can browse the gallery and select a plan for a complete permit application. The Town reserves the right to remove any pre-approved plan from the online gallery for any reason, including, but not limited to, if the Designer violates the terms of the MOU.

c. Compensation for Traditional Build Designers

Pre-approved plans are intended to offer a simplified and lower-cost opportunity to permit an SRDU. For use of a pre-approved plan, the Designer may require a royalty fee from the homeowner of no more than \$xxxx.00 and shall be paid in accordance with the terms specified herein. It will be up to the homeowner whether the Designer is then retained to prepare any applicable site plan, apply for and pay any applicable fees to obtain a building permit, and/or construct the SRDU at a price specified in their plan submission or otherwise agreed upon. Additional costs may be payable by the homeowner to the Designer depending on site-specific requirements, including but not limited to site plan review, septic system review and/or design.

d. Intellectual Property License

For materials and documents prepared by the Designer in connection with the pre-approved plans and this SRDU Initiative, to the extent permitted by law, the Designer shall retain the copyright and any other intellectual property rights (including the right to reuse). The Designer grants to the Town an exclusive, irrevocable, unlimited, license, subject to the payment of a royalty fee, to use all documents and all other materials prepared by the Designer to the extent necessary for the Town to review and showcase the pre-approved plan in an online gallery, and any related actions contemplated by this MOU. The Town may make and retain copies of such documents for its information and reference. All pre-

approved plans shall include a visible watermark indicating their origin and intended use within the Town's jurisdiction only.

The Designer represents and warrants that it has all necessary legal authority to make the assignments and grant the licenses required by this Section.

e. Release and Indemnity

The Designer releases and shall indemnify and hold the Town harmless from any and all losses, injuries, deaths, claims, actions, or damages, including, without limitation, all related legal costs (collectively "**Losses**"), suffered by any person or entity, including, without limitation, the Designer, arising from or in any way related to the publication or use of the Designer's SRDU plans, including but not limited to any trademark, patent, and copyright infringement. In the event any suit or proceeding is brought against the Town or any employee, including, without limitation, Chief Building Official and building inspectors, agent or councilor (collectively "**Town Personnel**"), then in addition to indemnifying and holding the Town harmless from all related Losses, Designer shall, upon notice of the commencement of such suit or proceeding, defend the same, at no cost and expense to the Town or Town Personnel, and promptly satisfy any final judgment adverse to the Town or Town Personnel, whether alone or jointly with Designer; provided, that the Town retains the right to defend or participate in such action as do Town Personnel.

In the event of any losses, injuries, deaths, claims, actions or damages suffered by any person or entity arising from or in any way related to the Designer's SRDU plans and plan are caused by or resulting from the concurrent negligence of (i) the Town or Town Personnel, and (ii) the Designer or the Designer's agents or employees, the foregoing indemnity is valid and enforceable only to the extent of the Designer's negligence. In addition, nothing contained in this section shall be construed as requiring Designer to indemnify the Town against liability for damages arising out of bodily injury to persons or damage to property caused by or resulting from the sole negligence of the Town or its officers, employees, or agents. The foregoing indemnity is not intended to be limited by Designer's immunity under industrial insurance, and therefore solely for the purpose of not limiting the foregoing indemnity, Designer hereby waives any immunity under industrial insurance. Designer's waiver of immunity does not extend to claims by Designer's employees directly and solely against Designer. **The foregoing release and indemnity shall survive the termination of this MOU.**

f. Insurance

The Designer shall maintain commercially reasonable and industry-standard insurance coverage for its work related to the SRDU plan, with coverage similar to other architects, designers, or builders engaged in similar work and professions. To the extent necessary to ensure that Designer has commercially reasonable and industry-standard insurance coverage, the Town may compare Designer's insurance coverage to others participating in this SRDU program, and the Town reserves the right to require certain types and minimum amounts of insurance coverage as a condition to participation or continued participation in the Town's pre-approved SRDU program; provided that the Town shall consult in good faith with the Designer and take into consideration the additional costs of such coverage prior to requiring any additional coverage.

g. Homeowner Disclaimer and/or Release

Homeowners may be required to sign a disclaimer and/or release in favour of the Town as part of the permitting process if using a pre-approved plan. Designer will reasonably

cooperate with the Town with obtaining homeowner signatures on such a disclaimer/release, if requested by the Town. Designer shall not be required to cooperate with obtaining such signatures if the homeowner paid Designer a licensing fee and homeowner is not working with Designer in the permitting phase.

3. NOTICES

Any notice required under this MOU shall be in writing and shall be sent electronically, personally delivered or sent by Canada Post to the attention and address provided below. Either party may change the person or address for notice by notice to the other in writing. Notices shall be effect on the date when delivered.

If to Town:

If to Designer:

4. AMENDMENTS

This MOU may not be modified or amended other than by a written document executed by both parties, nor shall any waiver of any right or remedy of the Town be valid unless in writing and signed by the Town.

5. GOVERNING LAW

This MOU shall be construed in accordance with a reasonable interpretation of the express terms thereof, and shall not be construed strictly in favour of, or against, either party. This MOU is governed by and shall be construed in accordance with the laws of the Province of Ontario. Nothing in this MOU shall be construed as waiving any requirements of Applicable Law. The Designer covenants to comply with Applicable Law. The titles of the parts, sections, subsections of this MOU are for convenience only, and do not define or limits the contents.

6. TRANSFER OR ASSIGNMENT

This MOU is not transferable or assignable to any third party without the prior written consent of the Town, which may be withheld for any reason.

IN WITNESS WHEREOF, the undersigned have executed this MOU as of the date last listed below.

Designer:

Name

Date

Title and Firm

Signature

Town:

Name

Date

Title and department

Signature