

THIS INDENT

BETWEEN:

AND:

**CITY OF KELOWNA**  
a municipal corporation  
of 1435 Water Street, Kelowna, B.C.  
(hereinafter called the "Grantee")

OF THE SECOND PART

WHEREAS: the Grantor is the registered owner of an estate in fee simple of certain lands and premises located in the City of Kelowna, in the Province of British Columbia, and more particularly described as:

Lot A Section 14 Township 26 Osoyoos Division Yale District Plan KAP 73861

(hereinafter called the "Lands");

AND WHEREAS the Grantor has applied to the Grantee for the issuance of a building permit (s) to build an accessory building(s) for agricultural use on the lands.

AND WHEREAS the Grantor acknowledges that the zoning for the Lands pursuant to the Grantee's Zoning Bylaw states that:

"The purpose is to provide a zone for rural areas and agriculture uses as well as other complementary uses suitable in an agricultural setting."

AND WHEREAS section 219 of the *Land Title Act*, 1996 Chapter 250, provides that there may be registered as a charge against title to any land, a covenant in favour of a municipality, that land is to be used in a particular manner.

AND WHEREAS the Grantee before consenting to the issuance of an occupancy permit(s) of the new accessory structure(s) as a condition thereof requires this covenant to be registered as a charge against the Lands pursuant to section 219 of the *Land Title Act*, 1996 Chapter 250, in priority to any financial charges. The provision herein contained shall not be altered, amended or cancelled unless with the written consent first hand and obtained from a duly authorized representative of the City of Kelowna.

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the sum of \$1.00 now paid by the Grantor to the Grantee, the receipt of which is hereby acknowledged and for other good and valuable consideration, the Grantor does covenant and agree with the Grantee under section 219 of the *Land Title Act* of the Province of British Columbia as follows:

1. The Grantor, on behalf of herself and her heirs, executors, administrators, successors and assigns hereby acknowledges that the accessory structure(s), on the Land shall not be used as a dwelling(s).
2. For certainty, the Grantor shall not permit the accessory building(s) on the Land to be occupied for any tourist accommodation or bed and breakfast use, or for any residential occupancy.
3. The Grantor agrees that the accessory building(s) may not be used for rental purposes.
4. Subject to the provisions of section 219 of the *Land Title Act*, the covenants contained in this agreement shall be covenants that burden and run with the Land and shall inure to the benefit of and be binding upon the parties, their heirs, executors, administrators, successors and assigns and the Grantor specifically agrees to give written notice of this agreement to any person to whom the Grantor proposes to dispose of the Land, which notices shall be received by that person prior to such disposition. For the purposes of this paragraph the word "dispose" shall have the meaning given to it under the *Interpretation Act*, 1996 Chapter 238.

5. Nothing in this Agreement shall prejudice or affect the rights, powers and remedies of the Grantee in relation to the Grantor, including his heirs, executors, administrators, successors and assigns, or the Lands under any law, bylaw, order or regulation or in equity all of which rights, powers and remedies may be fully and effectively exercised by the Grantee as if this Agreement had not been made by the parties.

6. The Grantor will do or cause to be done at his expense all acts reasonably necessary for the Grantee to gain priority for this Agreement over all liens, charges and encumbrances which are or may be registered against the Lands save and except those in favour of the Grantee and those specifically approved in writing by the Grantee.

7. The parties agree that this Agreement shall not be modified or discharged except in accordance with the provisions of section 219 of the **Land Title Act**.

8. The Grantor shall do or cause to be done all things and execute or cause to be executed all documents and give such further and other assurance which may be reasonably necessary to give proper effect to the intent of this Agreement.

9. (a) The Grantor or any of his heirs, executors, administrators and assigns, as the case may be, shall give written notice of this Agreement to any person to whom he proposes to dispose of the Lands, which notice shall be received by that person prior to such disposition.

(b) For the purposes of this paragraph the word "dispose" shall have the same meaning given to it under section 29 of the **Interpretation Act**, R.S.B.C. 1979, c.206.

10. Whenever the singular or masculine or neuter is used herein, the same shall be construed as including the plural, feminine, body corporate or politic unless the context requires otherwise.

11. If any section or any part of this Agreement is found to be illegal or unenforceable, then such sections or parts shall be considered to be separate and severable from this Agreement and the remaining sections or parts of this Agreement, as the case may be, shall be unaffected thereby and shall remain and be enforceable to the fullest extent permitted by law as though the illegal or unenforceable parts or sections had never been included in this Agreement.

12. This Agreement shall be interpreted according to the laws of the Province of British Columbia.

13. Where there is a reference to an enactment of the Province of British Columbia in this Agreement, that reference shall include a reference to any subsequent enactment of the Province of British Columbia of like effect, and any amendments thereto.

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