

SCHEDULE B

This forms part of application

FH16-0002



City of
Kelowna
COMMUNITY PLANNING

Planner
Initials

MS

THIS AGREEMENT dated for reference @, is

BETWEEN:

@

("Owner")

AND:

@

("Municipality")

GIVEN THAT:

- A. Section 219 of the Land Title Act permits the registration of a covenant of a negative or positive nature in favour of a municipality, in respect of the use of land, the building or buildings on the land, the subdivision of land and the preservation of a specified amenity on the land;
- B. The Owner is the registered owner in fee simple of land in the Municipality legally described as @ (insert address) (the "Land") which land is within the Agricultural Land Reserve;

The *Agricultural Land Commission Act* prohibits the Municipality from approving more than one residence on a parcel of land in the Agricultural Land Reserve unless the additional residences are necessary for farm use; and

- C. *The Owner has represented to the Municipality that the additional farm residences permitted under this Agreement are necessary for the farm use of the Land, and has requested the Municipality to permit the development of the Land for Farm Worker Housing, in exchange for covenants of the Owner to be contained in a covenant registered against title to the Land under s. 219 of the Land Title Act.*

This Agreement is evidence that the Owner covenants and agrees with the Municipality, in accordance with Section 905 of the *Local Government Act* and Section 219 of the *Land Title Act*, as follows:

1. Interpretation

In this Agreement, the following words and terms have the following meanings:

"Temporary farm worker housing" (TFWH) means accommodation units that are used solely for the purpose of providing cooking, sanitary, and sleeping facilities to temporarily house temporary farm worker(s) on a farm unit as necessary for the agricultural labour needs of a farm operation or other farms, if permitted, and be in accordance with the BC Agricultural Council standards for farm worker housing, as they may change from time to time. Specifically, the TFWH unit is identified in Schedule 'A'.

"temporary farm worker" means an individual or individuals who carry out agricultural work on a temporary and seasonal basis on a farm unit and may or may not be registered with a Canadian federal government temporary worker program.

“farm unit” means one or more contiguous or non-contiguous parcels, that may be owned, rented or leased, within City limits, which forms and is managed as a single farm.

2. Use of Farm Worker Housing

The Owner covenants and agrees that:

- (a) The TFWH is identified the dwelling identified in Schedule ‘A’;
- (b) The TFWH unit on the Land shall be occupied only by temporary farm workers carrying out agricultural work on the farm unit;
- (c) The TFWH on the Land shall not be occupied by any person unless the Land is assessed as a “farm” under the Assessment Act, according to the most recent records of the B.C. Assessment Authority;
- (d) occupancy of the TFWH unit onsite is restricted to March 1 through October 31 inclusive; and
- (e) There will be no more than 40 temporary farm workers residing in the TFWH at any one time.

For certainty, the Owner must not permit the TFWH on the Land to be occupied for any tourist accommodation or bed and breakfast use, or for any residential occupancy other than the occupancy of a temporary farm worker. No other dwellings on the land, other than that identified in Schedule ‘A’, may be used for TFWH.

3. Removal or conversion of TFWHs

In the event that the TFWH unit, as identified in Schedule ‘A’, is no longer used or occupied by a farm worker or seasonal farm worker, the Owner covenants to decommission the dwelling to a use permitted on the land, or remove the TFWH.

The following is required as assurance that the TFWH will be removed when no longer required. Prior to the issuance of TFWH permit, a bond must be supplied sufficient to either:

- remove or demolish the TFWH; or
- decommission the TFWH to an approved use.

If the TFWH is vacant for two consecutive growing seasons, the owner will remove, at their expense, any temporary structures for TFWH, and remove or decommission any existing buildings that had been repurposed for TFWH purposes, by December 31st of the second year of vacancy.

4. Specific Performance

The Owner agrees that the Municipality is entitled to obtain an order for specific performance of this Agreement and a prohibitory or mandatory injunction in respect of any breach by the Owner of this Agreement. The Owner agrees that this is reasonable given the public interest in restricting the occupancy of the Land in accordance with this Agreement.

5. No Effect on Laws or Powers

This Agreement does not:

- (a) affect or limit the discretion, rights, duties or powers of the Municipality under any enactment or at common law, including in relation to the use or subdivision of the Land;
- (b) impose on the Municipality any legal duty or obligation, including any duty of care or contractual or other legal duty or obligation, to enforce this Agreement;
- (c) affect or limit any enactment relating to the use or subdivision of the Land; or
- (d) relieve the Owner from complying with any enactment, including in relation to the use or subdivision of the Land.

6. Notice

Any notice which may be or is required to be given under this Agreement must be in writing and either be delivered or sent by facsimile transmission. Any notice which is delivered is to be considered to have been given on the first day after it is dispatched for delivery. Any notice which is sent by fax transmission is to be considered to have been given on the first business day after it is sent. If a party changes its address or facsimile number, or both, it must promptly give notice of its new address or facsimile number, or both, to the other party as provided in this section.

7. Covenant Runs With the Land

Every obligation and covenant of the Owner in this Agreement constitutes both a contractual obligation and a covenant granted by the Owner to the Municipality in accordance with Section 219 of the *Land Title Act* in respect of the Land and this Agreement burdens the Land and runs with it and binds the Owner's successors in title and binds every parcel into which it is consolidated or subdivided by any means, including by subdivision.

8. Limitation on Owner's Obligations

The Owner is only liable for breaches of this Agreement that occur while the Owner is the registered owner of the Land.

9. Waiver

An alleged waiver of any breach of this Agreement is effective only if it is an express waiver in writing of the breach. A waiver of a breach of this Agreement does not operate as a waiver of any other breach of this Agreement.

10. Further Acts

The Owner shall do everything reasonably necessary to give effect to the intent of this Agreement, including execution of further instruments.

11. Severance

If any part of this Agreement is held to be invalid, illegal or unenforceable by a court having the jurisdiction to do so, that part is to be considered to have been severed from the rest of this Agreement and the rest of this Agreement remains in force unaffected by that holding or by the severance of that part.

12. No Other Agreements

This Agreement is the entire agreement between the parties regarding its subject and it terminates and supersedes all other agreements and arrangements regarding its subject.

13. Amendment

This Agreement may be discharged, amended or affected only by an instrument duly executed by both the Owner and the Municipality.

14. Enurement

This Agreement binds the parties to it and their respective successors, heirs, executors and administrators. Reference in this Agreement to the "Municipality" is a reference also to the elected and appointed officials, employees and agents of the Municipality.

15. Deed and Contract

By executing and delivering this Agreement each of the parties intends to create both a contract and a deed executed and delivered under seal.

PRIORITY AGREEMENT

Bank of XXXXXXXX (the "Chargeholder") being the holder of Mortgage Number XXXXXXXX and Assignment of Rents XXXXXXXX (hereinafter referred to as the "Charge"). The Chargeholder, in consideration of the premises and the sum of One Dollar (\$1.00) now paid to the Chargeholder by the Transferee, hereby approves of and consents to the granting of the within Agreement and covenants and agrees that the same shall be binding upon its interests in or charge upon the Lands and shall be an encumbrance upon the Lands prior to the Charge in the same manner and to the same effect as if it had been dated and registered prior to the Charge.

IN WITNESS WHEREOF the Chargeholder has executed this Agreement on form D to which this Agreement is attached and which forms part of this Agreement.

Attachment - Schedule 'A'

END OF DOCUMENT