



1. Application

**Samuel Dabner, Lawyer, FULTON & COMPANY LLP,
 Lawyers/Trade-Mark Agents
 agent on behalf of City of Kamloops
 #300 - 350 Lansdowne Street
 Kamloops BC V2C 1Y1
 250-372-5542**

2728-509/SSD/jmt

2. Description of Land

PID/Plan Number	Legal Description
EPP93009	LOT 1 DISTRICT LOT D GROUP 2 KAMLOOPS DIVISION YALE (FORMERLY LYTTON) DISTRICT PLAN EPP70511
EPP93009	LOT 2 DISTRICT LOT D GROUP 2 KAMLOOPS DIVISION YALE (FORMERLY LYTTON) DISTRICT PLAN EPP70511
EPP93009	LOT 3 DISTRICT LOT D GROUP 2 KAMLOOPS DIVISION YALE (FORMERLY LYTTON) DISTRICT PLAN EPP70511
EPP93009	LOT 4 DISTRICT LOT D GROUP 2 KAMLOOPS DIVISION YALE (FORMERLY LYTTON) DISTRICT PLAN EPP70511
EPP93009	LOT 5 DISTRICT LOT D GROUP 2 KAMLOOPS DIVISION YALE (FORMERLY LYTTON) DISTRICT PLAN EPP70511

3. Nature of Interest

Type	Number	Additional Information
COVENANT		Pursuant to s. 219 of the Land Title Act

4. Terms

Part 2 of this instrument consists of:
(b) Express Charge Terms Annexed as Part 2

5. Transferor(s)

CITY OF KAMLOOPS

6. Transferee(s)

**CITY OF KAMLOOPS
 7 VICTORIA STREET WEST
 KAMLOOPS BC V2C 1A2**

7. Additional or Modified Terms



8. Execution(s)

This instrument creates, assigns, modifies, enlarges, discharges or governs the priority of the interest(s) described in Item 3 and the Transferor(s) and every other signatory agree to be bound by this instrument, and acknowledge(s) receipt of a true copy of the filed standard charge terms, if any.

Witnessing Officer Signature

CRYSTAL GELINEAU
Commissioner for Taking Affidavits
for British Columbia
 7 Victoria Street W
 Kamloops BC V2C 1A2

Execution Date

YYYY-MM-DD

2022-01-19

Transferor Signature(s)

CITY OF KAMLOOPS
 By their Authorized Signatory

Print Name: Natalie Garbay,
Corporate Officer

250-828-3311
 Expires: September 30, 2023
 (as to both signatures)

Print Name: Kenneth L. Christian,
Mayor

Officer Certification

Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the *Evidence Act*, R.S.B.C. 1996, c.124, to take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the *Land Title Act* as they pertain to the execution of this instrument.

<p>Electronic Signature</p> <p>Your electronic signature is a representation that you are a designate authorized to certify this document under section 168.4 of the <i>Land Title Act</i>, RSBC 1996 c.250, that you certify this document under section 168.41(4) of the act, and that an execution copy, or a true copy of that execution copy, is in your possession.</p>	<p>Samuel Stirling Dabner MFTR5B</p> <p>Digitally signed by Samuel Stirling Dabner MFTR5B Date: 2022-01-31 06:37:46 -08:00</p>
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TERMS OF INSTRUMENT – PART 2

SECTION 219 COVENANT – DRIVEWAY ACCESS AND GRADING/DRAINAGE

WHEREAS:

- A. The Transferor is the fee simple owner of lands situate in the City of Kamloops, in the Province of British Columbia, more particularly known and described as:

Firstly:

Lot 1 District Lot D Group 2 Kamloops Division Yale (formerly Lytton) District Plan EPP93009;

Secondly:

Lot 2 District Lot D Group 2 Kamloops Division Yale (formerly Lytton) District Plan EPP93009;

Thirdly:

Lot 3 District Lot D Group 2 Kamloops Division Yale (formerly Lytton) District Plan EPP93009;

Fourthly:

Lot 4 District Lot D Group 2 Kamloops Division Yale (formerly Lytton) District Plan EPP93009; and

Fifthly:

Lot 5 District Lot D Group 2 Kamloops Division Yale (formerly Lytton) District Plan EPP93009;

(referred to herein as the "Lots" and individually by the lot numbers: "Lot 1", "Lot 2", "Lot 3", "Lot 4" and "Lot 5");

- B. Access and grading/drainage are important aspects of use and development of the Lots;
- C. Driveway access to Lot 1 must only be located along the frontage of Lot 1 on Royal Avenue at certain specified locations;
- D. The Transferee has received a grading plan in respect of the Lots (Drawing Number 102, Rev. 2, Project 2431-107-75-) prepared by McElhanney Associates Land Surveying Ltd.

dated November 12, 2021, a copy of which is attached hereto as Schedule "A" (the "Grading Plan").

- E. The consent of the Approving Officer for the City of Kamloops is first required with respect to the Transferor's proposed subdivision and, as a condition of such consent, a Covenant is required to be charged against the Lots in priority to any financial charges pursuant to Section 219 of the Land Title Act, Chapter 250, R.S.B.C. 1996, which covenant is for the purpose of preventing any use of the Lots unless certain restrictions and conditions have been complied with and to ensure potential purchasers are made aware of the ongoing role that property owners must assume.

NOW THEREFORE WITNESSETH that for and in consideration of the sum of One Dollar (\$1.00) now paid by the Transferee to the Transferor (the receipt of which is hereby acknowledged) and for other good and valuable consideration, the Transferor and all persons claiming under him agree to the following restrictions:

Driveway Access – Lot 1

1. No portion of Lot 1 shall be used, occupied or built upon unless and until the Transferor (in respect of Lot 1) has obtained approval from the Transferee of the location for the driveway on Lot 1, which driveway must only be located within that part of Lot 1 that is lying southeast of a straight line and productions thereof; said line lying parallel to and eleven (11) meters perpendicularly distant in a north westerly direction from the most south easterly boundary of Lot 1.

Site Grading / Drainage – All Lots

2. No portion of Lot 1, Lot 2, Lot 3, Lot 4 or Lot 5 shall be used, occupied or built upon unless and until the Transferor (in respect of each Lot) has obtained approval from the Transferee of a lot grading and drainage plan. Upon approval of a lot grading and drainage plan for a Lot, the Lot shall only be used, occupied and built upon in compliance with the approved lot grading and drainage plan. In general, the Transferee's approval shall be contingent on, but not limited to, the lot grading and drainage plan complying with the Grading Plan.

General

3. The Transferor does remise, release and forever discharge the Transferee and its officers, employees, servants or agents from all loss, damage, costs, actions, suits, debts, accounts, claims and demands which the Transferor or its heirs, executors, administrators, successors and assigns may have against the Transferee and its officers, employees, servants or agents from or by reason of any damage suffered personally (including death) or arising out of or in connection with any access or grading/drainage restriction or requirement or any other matter or thing addressed in the preceding paragraphs as the subject-matter of this restrictive covenant.

4. The Transferor, on behalf of himself and his heirs, executors, administrators, successors and assigns, hereby indemnifies and saves harmless the Transferee and its employees, servants and agents from all loss, damage, costs, actions, suits, debts, accounts, claims and demands which the Transferor or the Transferee or any of their employees, servants or agents, may suffer or incur or be put to arising out of or in connection with:
 - (a) any breach of any covenant or agreement on the part of the Transferor or his heirs, executors, administrators, successors and assigns contained in this agreement; or

 - (b) any personal injury, death or loss or damage to the Lots or any improvement on the Lots, which arises out of or is in connection with any access or grading/drainage restriction or requirement or any other matter or thing addressed in the preceding paragraphs as the subject-matter of this restrictive covenant.

5. The Transferor shall register this Covenant as a charge on the Lots in priority to all financial charges, liens and encumbrances registered, or the registration of which is pending, at the time of application for registration of this Covenant.

6. The Transferor's covenants contained in this agreement shall burden and run with the Lots and shall enure to the benefit of and be binding upon the Transferor, his or her heirs, executors, administrators, successors and assigns.

7. No term, condition, covenant or other provision of this agreement will be considered to have been waived by the Transferee unless the waiver is expressed in writing by the Transferee. Any waiver by the Transferee of any term, condition, covenant or other provision of this agreement or any waiver by the Transferee of any breach, violation or non-performance of any term, condition, covenant or other provision of this agreement does not constitute and will not be construed as a waiver of any further or other term, condition, covenant or other provision of this agreement or any further or other breach, violation or non-performance of any term, condition, covenant or other provision of this agreement.
8. Nothing in this agreement shall prejudice or affect the rights, powers and remedies of the Transferee in relation to the Transferor (including his or her heirs, executors, administrators, successors and assigns) or the Lots 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 Transferee as if this agreement had not been made by the parties.
9. The Transferor or any of his or her 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 Lots or any part thereof, which notice 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 Section 29 of the *Interpretation Act*.
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. This agreement will be interpreted according to the laws of the Province of British Columbia. 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. 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 unless the context otherwise requires, all statutes referred to herein are enactments of the Province of British Columbia.
13. The Transferor shall do or cause to be done all things and execute or cause to be executed all documents and give such further and other assurances which may be reasonably necessary to give proper effect to the intent of this agreement.
14. The parties agree that the Transferee is not responsible to inspect the Lots or to otherwise ensure compliance with this agreement, nor is the Transferee required to remedy a default of this agreement, and a failure to enforce this agreement by the Transferee shall not constitute a waiver of its rights hereunder.

SCHEDULE "A" - GRADING PLAN

