

**TOWNSHIP OF WEST LINCOLN  
TEMPORARY USE AGREEMENT**

THIS AGREEMENT made this \_\_\_\_\_ day of \_\_\_\_\_, 2023, and authorized by By-law No. 2023-### of the Corporation of the Township of West Lincoln.

BETWEEN: JONATHAN KELLY and LOREEN JOY KELLY  
hereinafter called the OWNER  
OF THE FIRST PART

AND: BINBROOK HOLDINGS LTD.  
hereinafter called the  
MORTGAGEE OF THE  
SECOND PART

AND: THE CORPORATION OF THE TOWNSHIP OF WEST LINCOLN  
hereinafter called the TOWNSHIP  
OF THE THIRD PART

WHEREAS:

1. The Owner warrants and represents it is the registered Owner, in fee simple, of the lands described in Schedule 'A' attached hereto and forming part of this Agreement;
2. The Owner desires that the Township allow the establishment of a garden suite (modular unit) on the lands for a period of time permitted in Temporary Use By-law 2023-### passed for that purpose;
3. The Owner acknowledges that the lands are subject to a Temporary Use Agreement pursuant to the provisions of Section 39.1 of the Planning Act, R.S.O., 1990;
4. The Township is of the opinion that it is in the best interest of the Township and its inhabitants for any construction or development on the lands to proceed upon the Owner being required to undertake to make certain arrangements and to give certain assurances with and to the Township for the health, safety, convenience and well-being of the public;

NOW THEREFORE, in consideration of the premises and the sum of One Dollar (\$1.00) paid by the Township to the Owner, the Township and the Owner mutually covenant and agree as follows:

**1. DEFINITIONS**

In this Agreement:

- (a) "Chief Building Official" means the Chief Building Official, or designate, in the full-time employ of the Township.
- (b) "Clerk" shall mean the Clerk, or designate, in the full-time employ of the Township.
- (c) "Director of Planning" means the Director of Planning, or designate, in the full-time employ of the Township.
- (d) "Director of Public Works" means the Director of Public Works and Engineering, or designate, in the full-time employ of the Township.
- (e) "Garden Suite" means a temporary dwelling unit as permitted by By-law 2023-### & any renewals thereof.
- (f) "Lands" means the lands described in Schedule 'A' and shown on Schedule "B" attached hereto and forming part of this Agreement.
- (g) "Mortgagee" means any mortgage holder having an interest in the subject lands in Schedule 'A'
- (h) "Owner" means Jonathan Kelly and Loreen Joy Kelly and any and all subsequent owners.

- (i) "Required", where not specified, means required by this Agreement and/or an appropriate authority.
- (j) "Township" means The Corporation of the Township of West Lincoln or any of its authorized full-time employees.

## **2. BUILDING PERMIT**

- (a) The Owner agrees to apply for and obtain a building permit for construction of the works contemplated by this Agreement no later than six months after approval of the plans required pursuant to Clause 2.(c) and acknowledges and agrees that failure to do so will require that the Owner submit and receive approval of a new temporary use agreement relating to the lands reflecting the latest standards and policies of the Township prior to a building permit being issued.
- (b) The Owner acknowledges and agrees that where construction of all works contemplated by the Agreement have not been seriously commenced within six months of the issuance of a building permit, or where construction is substantially suspended or discontinued for a period of more than one year after commencement of construction, the building permit shall be revoked and the site shall be returned to its original condition. If the building can not be completed in that time frame and there are no significant changes (as determined by the Chief Building Official) the Owner may apply in writing for an extension to the building permit. The extension shall only be granted if the Owner has a sufficient reason for the delay in construction (as determined by the Chief Building Official). If there are significant changes to the submitted plans affecting permits required by this Agreement, the Owner shall submit for approval a new Site Plan application related to the lands reflecting the latest standards and policies required of the Township.
- (c) The Owner acknowledges and agrees that the Township shall be under no obligation to issue a building permit on the lands until:
  - (i) Such plans, which in the opinion of the Director of Planning are necessary for the development of the lands, have been approved in writing by the said Director.
  - (ii) Required site servicing, grading and drainage plans have been approved by the Director of Public Works and Recreation.
  - (iii) The Owner has obtained all necessary approvals from any government agency having an interest in the development.
  - (iv) All Municipal taxes in arrears, if any, are paid in full.
  - (v) Adequate sewage disposal system & portable water supply system has been designed and approved by the appropriate approval authority.

## **3. PREPARATION AND SUBMISSION OF PLANS**

The Owner acknowledges and agrees that:

- (a) Any required Grading, Drainage and Servicing plans will be drawn by a Registered Professional Engineer.
- (b) Any required sewage disposal plans will be drawn by Registered Professionals.
- (c) It is the Owner's responsibility to ensure that all plans and development indicated thereon shall be in accordance with the requirements of all applicable laws, by-laws, codes, rules and regulations.
- (d) All plans required by this Agreement shall be submitted by the Owner and receive approval of the Township no later than six months after the passing of a by-law by the Township to enter into this Agreement or no later than six months after approval of an application to amend approved plans and that failure to do so will require, at the discretion of the Director of Planning, that the Owner submit and have approved a new Site Plan approval application relating to the lands reflecting the latest standards and policies of the Township.

## **4. BUILDINGS, CONSTRUCTION AND OCCUPANCY**

- (a) The Owner agrees that any garden suite on the lands will be constructed or installed entirely in accordance with:
  - (i) any plans related to the proposed buildings or structures that may be approved by the Township;
  - (ii) the provisions of the Ontario Building Code, the Township's Building By-law and the requirements of the Chief Building Official;
  - (iii) the requirements of the Zoning By-law, as amended, of the Township;
  - (iv) the requirements of this Agreement & the corresponding Development Agreement.
  - (v) any applicable statute, regulation or code of any other authority having jurisdiction.
- (b) The Owner agrees not to install the garden suite on the lands except in accordance with the terms and conditions contained in this Agreement unless otherwise agreed to and approved, in writing, by the Director of Planning.
- (c) The Owner agrees not to construct or install private servicing until affected government agencies or authorities have formally approved such work.
- (d) The Owner agrees not to occupy or use or permit the occupancy or use of any portion of any garden suite on the lands without first receiving written approval by the Township.
- (e) The Owner understands that the Temporary Use By-law requires that the use of the garden suite must cease at the end of the 20-year period unless a request is received 3 months prior to the end of the 20-year period requesting an extension and Council approves the extension of a subsequent Temporary Use By-law.
- (f) The Owner agrees to permit the occupancy of the garden suite on the lands only by persons named in this Site Plan Agreement, being Ed and Cornelia Redekop.
- (g) The Owner agrees to remove any building, intended for use as a garden suite, from the lands at such time as the occupants named in the Temporary Use Agreement no longer require the use of the garden suite.
- (h) The Owner agrees that this Temporary Use Agreement covers the installation, maintenance and removal of the garden suite, the occupancy of the garden suite, and the \$5,000 deposit against the garden suite.

## 5. NOTIFICATION

Any Notice or Notification pursuant to the terms of this Agreement may be effected by prepared First Class Mail:

- (a) By the Township upon the Owner at its address: 9275 Concession 5 Road, Caistor Centre, Ontario, L0R 1E0, unless otherwise advised.
- (b) By the Owner upon the Township at its address: P.O. Box 400, 318 Canborough Street, Smithville, Ontario L0R 2A0

Service of such Notice or Notification shall be deemed to have occurred 7 days after the date of the mailing of same.

## 6. GENERAL

- (a) The Owner hereby constitutes any successor-in-title to the lands its agent with full authority to enter into any Agreement with the Township to amend this Agreement from time to time.
- (b) The Owner agrees that upon the execution of this Agreement, the lands are charged with the performance of this Agreement.
- (c) The Owner understands and agrees that if the Owner is required to submit and have approved a new temporary use agreement application, the Owner also agrees to have this Agreement replaced by a new agreement, if required.
- (d) The Owner agrees to apply for an extension to the time period permitted in a Temporary Use By-law, a minimum of three (3) months in advance of the expiry date thereof, if the Owner so wishes to have such period of time extended.
- (e) It is understood and agreed that this Agreement and everything contained herein shall ensure to the benefit of and be binding upon the heirs, executors, administrators, mortgagees,

successors-in-title and assigns of each of the parties hereto as the case may be and shall constitute a covenant running with the lands.

- (f) The Owner grants to the Township, its servants, agents and assigns, permission to enter upon the lands for the purpose of inspection of any work referred to in this Agreement and for the purpose of completion of any works in accordance with this Agreement and such entry and inspection shall not be deemed an acceptance of any of the works by the Township or an assumption by the Township of any liability in connection therewith or a release of the Owner of its obligations under this Agreement.
- (g) The Owner understands and agrees that the lands will be forever maintained in accordance with the terms and conditions of this Agreement. Failure of the Owner to do so can result in the Township doing so at the expense of the Owner.
- (h) In the event of failure by the Owner to carry out any provisions of this Agreement (the determination of which shall be at the sole discretion of the Director of Planning) the Township may provide Notice to the Owner of the nature of the failure.
- (i) If the Owner fails to remedy any failure of which it has been notified pursuant to this Agreement within twenty-one days after Notice by the Township, the Township shall have the full authority, power and right to enter upon the lands to employ such workmen and to use such equipment and machinery as is deemed, in the sole discretion of the Township, to be necessary to complete and perform any work that is required to remedy the failure and the Owner agrees to pay the Township the costs to remedy the failure. Such costs shall include legal, planning, engineering or any other professional or administrative costs incurred by the Township. In the event of the failure of the Owner to pay such costs within thirty days of serving Notice thereof upon the Owner, the Township shall have the right to recover such costs by action or in like manner as Municipal taxes.
- (j) The Owner will at all times indemnify and keep indemnified and save harmless the Township from any losses, costs, damages and injuries which the Township may suffer or be put to for or by reason of the construction, maintenance or existence of any work done by the Owner, its contractors, servants or agents on the lands or on any lands adjacent to such lands and such indemnity shall constitute a first lien and charge on the lands in favour of the Township.
- (k) The Owner understands and agrees that there shall be no work performed on or development of the lands except in conformity with all applicable municipal by-laws and Provincial legislation and that this Agreement or approval of plans does not exempt the Owner from any applicable statute, regulation, or code of any other authority having jurisdiction contrary to the requirements of this Agreement or prevent the Township from taking action to rectify any non-compliance resulting from said work or development taking place.
- (l) It is understood and agreed that the garden suite permitted by this agreement shall only be permitted accessory to an existing residential use on the lands as shown on Schedule "B". The owner agrees that any application for consent for severance of the garden suite from the remainder of the lands shall not be supported by the Township, based on current policy.
- (m) The Owner shall not call into question directly or indirectly in any proceeding whatsoever in law or in equity or before any Administrative Tribunal the right of the Township to enter into this Agreement and to enforce each and every term, covenant and condition herein contained and this Agreement or this Clause may be pleaded as an estoppel against the Owner in any such proceeding.

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IN WITNESS WHEREOF, the parties hereto have hereunto affixed their respective corporate seals under the hands of their duly authorized signing officers in that behalf.

THE CORPORATION OF THE TOWNSHIP OF WEST LINCOLN

SIGNED, SEALED  
AND DELIVERED

\_\_\_\_\_  
MAYOR: CHERYL GANANN

Date signed:\_\_\_\_\_

\_\_\_\_\_  
CLERK: JOANNE SCIME

Date signed:\_\_\_\_\_

OWNER:

\_\_\_\_\_  
Signature – Jonathan Kelly

\_\_\_\_\_  
Signature –Loreen Joy Kelly

Date signed: \_\_\_\_\_

MORTGAGEE:

\_\_\_\_\_  
Binbrook Holdings Ltd.

Print Name and Title:\_\_\_\_\_

Date:\_\_\_\_\_

**SCHEDULE 'A'**

A temporary use agreement between Jonathan Kelly, Loreen Joy Kelly, Binbrook Holdings Ltd., and the Corporation of the Township of West Lincoln.

All and Singular that certain parcel or tract of land, situation lying and being composed of Concession 6, Part Lot 16, formerly in the Township of Caistor, now in the Township of West Lincoln, Regional Municipality of Niagara, municipally known as 9275 Concession 5 Road.

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Schedule 'B'- Drawings

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