

PART 2 - TERMS OF INSTRUMENT

SECTION 219 COVENANT

THIS AGREEMENT dated for reference _____, 2003 is

BETWEEN:

R.S.S.D. Ventures Ltd.
3832 Capozzi Road
Kelowna, BC
V1W 3L2

And

R 484 Enterprises Ltd.
4678 Lakeshore Road
Kelowna, BC
V1W 4H6

("Owners")

AND:

CITY OF KELOWNA, 1435 Water Street, Kelowna, B.C.
V1Y 1J4

("City")

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 the City in respect of the use of land or construction on land;

B. The Owner and the City wish to enter into this Agreement to provide for [affordable/affordable rental/seniors/special needs] housing on the terms and conditions set out in this Agreement, and agree that this agreement is both a section 219 covenant under the *Land Title Act* and a housing agreement under s. 905 of *the Local Government Act*,

This Agreement is evidence that in consideration of \$2.00 paid by the City to the Owner (the receipt of which is acknowledged by the Owner), the Owner covenants and agrees with the City, in accordance with section 219 of the *Land Title Act*, as follows:

ARTICLE 1 INTERPRETATION

1.1 Definitions -

- (a) "City" means the City of Kelowna;
- (b) "Dwelling Unit" means one or more rooms that are designed, occupied or intended for occupancy as a separate living space (with cooking, sleeping and sanitary facilities located within that space) for the exclusive residential use of a single domestic unit;
- (c) "Land" means the land described in Item 2 of the Form C to which this Agreement is attached;
- (d) "LTO" means the Kamloops Land Title Office or its successor;
- (e) "Zoning Bylaw" means *City of Kelowna Bylaw No. 8000*.

1.2 Interpretation - In this Agreement:

- (a) reference to the singular includes a reference to the plural, and vice versa, unless the context requires otherwise;
- (b) article and section headings have been inserted for ease of reference only and are not to be used in interpreting this Agreement;
- (c) reference to a particular numbered section or article, or to a particular lettered Schedule, is a reference to the correspondingly numbered or lettered article, section or Schedule of this Agreement;
- (d) if a word or expression is defined in this Agreement, other parts of speech and grammatical forms of the same word or expression have corresponding meanings;
- (e) the word "enactment" has the meaning given in the *Interpretation Act* on the reference date of this Agreement;

- (f) reference to any enactment includes any regulations, orders or directives made under the authority of that enactment;
- (g) reference to any enactment is a reference to that enactment as consolidated, revised, amended, re-enacted or replaced, unless otherwise expressly provided;
- (h) the provisions of s. 25 of the *Interpretation Act* with respect to the calculation of time apply;
- (i) time is of the essence;
- (j) all provisions are to be interpreted as always speaking;
- (k) reference to a "party" is a reference to a party to this Agreement and to their respective successors, assigns, trustees, administrators and receivers;
- (l) reference to a "day", "month", "quarter" or "year" is a reference to a calendar day, calendar month, calendar quarter or calendar year, as the case may be, unless otherwise expressly provided;
- (m) the definitions given in the Zoning Bylaw apply for the purposes of this Agreement; and
- (n) any act, decision, determination, consideration, consent or exercise of discretion by a party, or other person, as provided in this Agreement must be performed, made or exercised acting reasonably.

1.3 Purpose of Agreement - The Owner and the City agree that:

- (a) this Agreement is intended to serve the public interest by providing for occupancy of a certain number of Dwelling Units, of the kinds provided for in this Agreement, that are in demand in the City of Kelowna but that are not readily available;
- (b) performance of this Agreement by the Owner is a condition, as contemplated by s. 904 of the *Local Government Act*, of the Owner becoming entitled to certain density bonuses respecting development of the Land, which density bonuses the Owner acknowledges are a benefit to the Owner;] and
- (c) damages are not an adequate remedy to the City in respect of any breach of this Agreement by the Owner, such that the Owner agrees the City should be entitled to an order for specific performance, injunction or other specific relief respecting any breach of this Agreement by the Owner.

**ARTICLE 2
HOUSING AGREEMENT AND LAND USE RESTRICTIONS**

- 2.1 The Owner agrees with the City that:
- (a) the Land must be used only in accordance with this Agreement; and
 - (b) the Land must be used only for the construction, use and occupation of Medium Density Multiple Family development; and
 - (c) The owner will designate a total of 8 units in said development for rental or ownership by senior citizens (persons over the age of 65).

**ARTICLE 3
GENERAL**

3.1 Notice of Housing Agreement - For clarity, the Owner acknowledges and agrees that:

- (c) this Agreement constitutes both a covenant under s. 219 of the *Land Title Act* and a housing agreement entered into under s. 905 of the *Local Government Act*,
- (d) the City is required to file a notice of housing agreement in the LTO against title to the Land; and
- (e) once such a notice is filed, this Agreement binds all persons who acquire an interest in the Land.

3.2 No Effect On Laws or Powers - This Agreement does not

- (a) affect or limit the discretion, rights, duties or powers of the City under any enactment or at common law, including in relation to the use or subdivision of land,
- (b) impose on the City 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 land, or
- (d) relieve the Owner from complying with any enactment, including in relation to the use or subdivision of land.

3.3 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.

3.4 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 City 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 or by strata plan under the *Strata Property Act*.

3.5 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.

3.6 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.

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

3.8 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.

3.9 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.

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

3.11 Priority - The Owner agrees to do everything necessary at the Owner's expense to ensure that this Agreement, and each subsequent section 219 covenant contemplated by section 2 are registered against title to the Land with priority over all financial charges, liens and encumbrances registered or pending at the time of application for registration of these agreements.

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

3.13 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.

As evidence of their agreement to be bound by the above terms, the parties each have executed and delivered this Agreement under seal by executing Part 1 of the *Land Title Act* Form C to which this Agreement is attached and which forms part of this Agreement.

Robert G. Shaughnessy
Approving Officer
City of Kelowna

CITY OF KELOWNA
by its authorized signatories

Mayor

City Clerk

Gary Randhawa
Signed by Gary Randhawa in
the presence of:

Witness (print name)

Gary Randhawa

Address

Occupation

Gordon Geddes
Signed by Gordon Geddes in
the presence of:

Witness (print name)

Gordon Geddes

Address

Occupation

Marnie Ann Perrier
Signed by Marnie Ann Perrier in
the presence of:

Witness (print name)

Marnie Ann Perrier

Address

Occupation

Christopher J. Thomson
Signed by Christopher J. Thomson in
the presence of:

Witness (print name)

Christopher J. Thomson

Address

Occupation

