
CITY OF KELOWNA
MEMORANDUM

DATE: JANUARY 25, 2007
TO: CITY MANAGER
FROM: PLANNING & DEVELOPMENT SERVICES DEPARTMENT
APPLICATION NO. Z06-0034 **OWNER:** RANCAR SERVICES LTD.
AT: 644 LEQUIME ROAD **APPLICANT:** RANCAR SERVICES LTD.
PURPOSE: TO SEEK AUTHORIZATION FOR THE CITY OF KELOWNA TO ENTER INTO A HOUSING AGREEMENT WITH RANCAR SERVICES LTD. FOR 644 LEQUIME ROAD
EXISTING ZONE: RM3 – LOW DENSITY MULTIPLE HOUSING
PROPOSED ZONE: RM4 – TRANSITIONAL LOW DENSITY HOUSING
REPORT PREPARED BY: RYAN SMITH

1.0 **RECOMMENDATION**

That Council forward Bylaw No. 9709, authorizing a Housing Agreement between the City of Kelowna and Rancar Services Ltd. which requires the owners to designate one dwelling unit for owner occupied affordable housing on Lot A, Section 6, Township 26, ODYD Plan 24496, for reading consideration.

2.0 **SUMMARY**

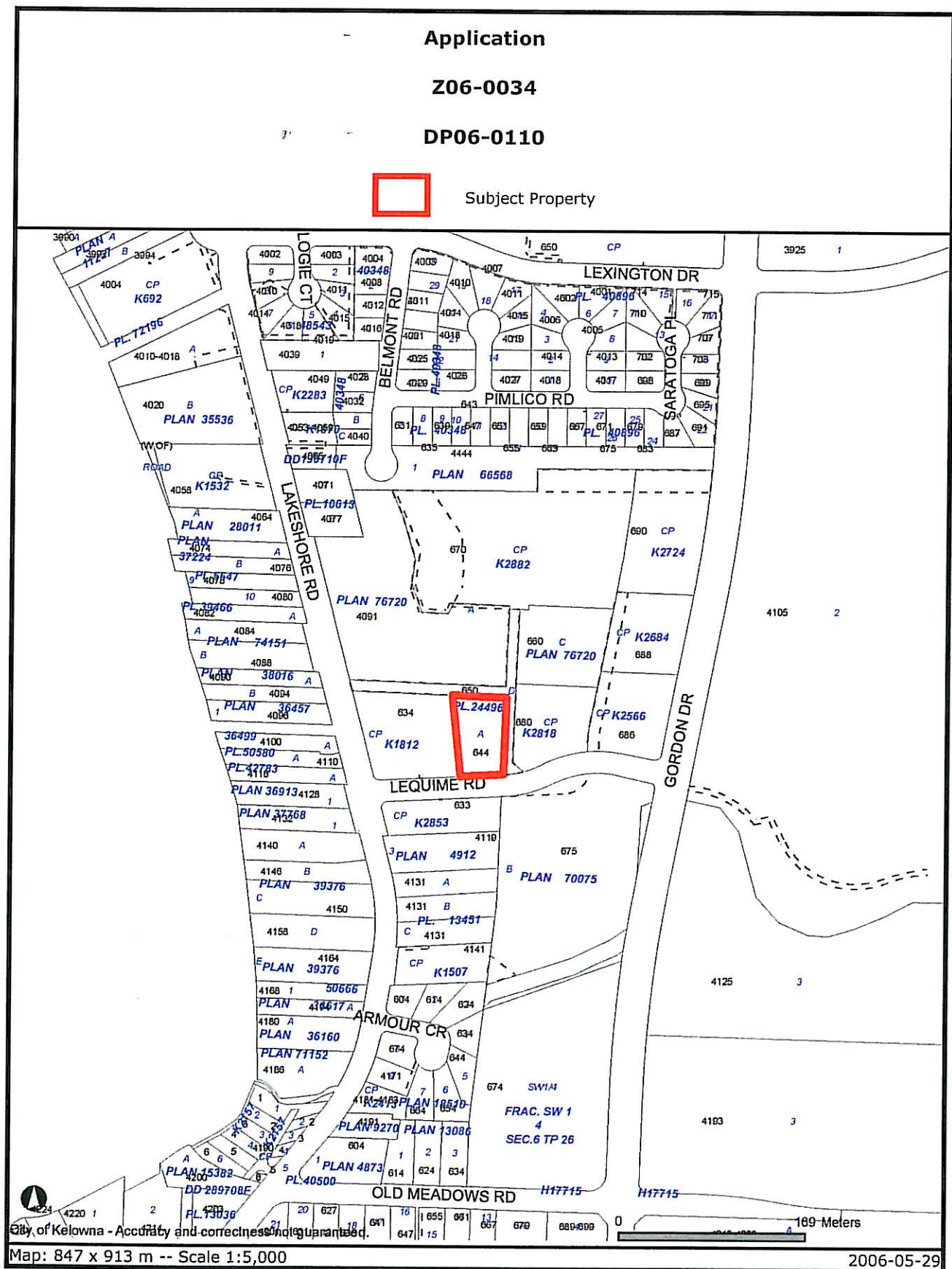
After a public hearing held on September 19, 2006, Council advanced the related rezoning application to 3rd reading with final adoption pending Council approval of a Development Permit/Variance Permit and the completion of requirements identified by the Works and Utilities Department. At the public hearing, the applicant indicated that in return for the density increase granted by the proposed amendment to the Official Community Plan Future Land Use Designation, one unit of affordable housing would be provided.

Staff will arrange to have Council consideration of the related Development Permit, Development Variance Permit, Housing Agreement Bylaw and Zone Amending Bylaw occur at the same meeting.

for 
Shelley Gambacort
Acting Development Services Manager

for 
Approved for inclusion 
Mary Pynenburg, MRAIC MCIP
Director of Planning & Development Services

MP/SG/rs
Attach.



Certain layers such as lots, zoning and dp areas are updated bi-weekly. This map is for general information only.
The City of Kelowna does not guarantee its accuracy. All information should be verified.

LAND TITLE ACT
FORM C

(Section 219.81)

Province of
British Columbia

GENERAL INSTRUMENT – PART 1 (This area for Land Title Office use)

Page 1 of 16 pages

1. APPLICATION: (Name, address, phone number and signature of applicant, applicant's solicitor or agent)
BISHOP & COMPANY, Barristers & Solicitors
#206 – 347 Leon Avenue, Kelowna, B.C. V1Y 8C7
Client No.: 010345 File No.: HP/13239

Signature of applicant, applicant's solicitor or agent

2. PARCEL IDENTIFIER(S) AND LEGAL DESCRIPTION(S) OF LAND:*
- | | |
|-------------|---------------------------------------|
| (PID) | (LEGAL DESCRIPTION) |
| 005-911-851 | Lot A, Sec 6, Tp 26, ODYD, Plan 24496 |

3. NATURE OF INTEREST:*

DESCRIPTION	DOCUMENT REFERENCE	PERSON ENTITLED TO INTEREST
Section 219 Covenant	Entire Document	Transferee
Priority Agreement granting		
Section 219 Covenant priority over	Page 10	Transferee
Mortgage KL138138		

4. TERMS: Part 2 of this Instrument consists of (select one only)

(a) Filed Standard Charge Terms

(b) Express Charge Terms

(c) Release

D.F. No.

Annexed as Part 2

There is no Part 2 of this instrument

A selection of (a) includes any additional or modified terms referred to in Item 7 or in a schedule annexed to this instrument.
If (c) is selected, the charge described in Item 3 is released or discharged as a charge on the land described in Item 2.

5. TRANSFEROR(S):*

RANCAR SERVICES LTD. (Inc. # BC0381781), c/o #206 – 347 Leon Avenue,
Kelowna, BC V1Y 8C7

6. TRANSFeree(S): (Including occupation(s), postal address(es) and postal code(s))*

CITY OF KELOWNA a Municipal Corporation having its offices at 1435 Water Street,
Kelowna, BC V1Y 1J4

7. ADDITIONAL OR MODIFIED TERMS:*

N/A

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.

Officer Signature(s)

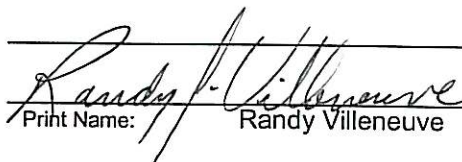
Execution Date

Party(ies) Signature(s)

HOWARD F. PEET
Barrister & Solicitor
#206 – 347 Leon Avenue
Kelowna, B.C. V1Y 8C7
Phone: 250-861-4022

Y	M	D
06	10	19

RANCAR SERVICES LTD.
By its authorized signatory


Print Name: Randy Villeneuve

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. 1979, C.116, 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.

* If space insufficient, enter "SEE SCHEDULE" and attach schedule in Form E.

** If space insufficient, continue executions on additional page(s) in Form D.

LAND TITLE ACT
FORM D
EXECUTIONS CONTINUED

Page 2 of 16 pages

Officer Signature(s)

Execution Date

Y M D

Transferor/Borrower/Party
Signature(s)

CITY OF KELOWNA
by its authorized signatory(ies):

[Print Name] Mayor

[Print Name] City Clerk

(As to all signatures)



TITIA TSIKNIS
A Commissioner for Taking
Affidavits for British Columbia
4720 Kingsway
Burnaby, BC V5H 4N2

(As to all signatures)

Execution Date		
Y	M	D
2006	11	28

BANK OF MONTREAL
by its authorized signatory(ies):
AS TO PRIORITY

D. LODERMEIER
Senior Portfolio Manager

[Print Name]

[Print Name]

Chris Robbins
Senior Portfolio Manager

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.

SECTION 219 COVENANT AND HOUSING AGREEMENT

THIS AGREEMENT dated for reference _____ October 19th, 2006 is

BETWEEN:

RANCAR SERVICES LTD. (Inc. # BC0381781)
206 - 347 LEON AVE
KELOWNA, BC V1Y 8C7

("Owner")

AND:

CITY OF KELOWNA, a local government incorporated pursuant to the *Community Charter* and having its offices at 435 Water Street, Kelowna, B.C. V1Y 1J4

("City")

WHEREAS:

- A. The Owner has applied to the City for rezoning to permit the construction of a residential development for Multiple Unit Residential Development, and has consented to the designation of certain lands for affordable housing for in accordance with the City's definitions of affordable housing on certain lands, more particularly described in this Agreement;
- B. 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;
- C. The City may, pursuant to section 905(1) of the *Local Government Act*, enter into an agreement with an owner of land that includes terms and conditions regarding the occupancy, tenure, and availability of the City in respect of the use of land or construction on land;
- D. The Owner and the City wish to enter into this Agreement to provide for affordable ownership and/or 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*;
- E. The City has, by bylaw, authorized the execution of this Agreement and the Owner has duly authorized the execution of this Agreement;

This Agreement is evidence that in consideration of \$1.00 paid by the City to the Owner (the receipt of which is acknowledged by the Owner) and in consideration of the promises exchanged below, the City and Owner agree, as covenants granted by the Owner to the City under section 219 of the *Land Title Act*, and as a housing agreement between the Owner and the City under s. 905(1) of the *Local Government Act*, as follows:

**ARTICLE 1
INTERPRETATION**

1.1 Definitions -

"Affordable Ownership" means the income level, published annually by the City, at which a Household would be capable of buying a home at the Starter Home Price, and is based on the purchase ability at the median income level from the most recent federal census for all two or more person households, assuming 30% of gross household income expenditure for shelter;

"BCCPI" means the All-Items Consumer Price Index for British Columbia, published from time to time by Statistics Canada, or its successor in function, where 1992 = 100;

"Caregiver" means an individual who provides assistance with the performance of the personal functions and activities necessary for daily living that a person is unable to perform efficiently for himself or herself;

"City" means the City of Kelowna;

"Dwelling Unit" means accommodation providing sleeping rooms, washrooms, and no more than one kitchen, intended for domestic use, and used or intended to be used permanently or semi permanently for a Household.. This use does not include a room in a hotel or a motel;

"Gross Annual Income" means the sum of all taxable incomes, being the amount identified as taxable income on the most recent income tax return (line 260 of the income tax T1 General Form), of all individuals 15 years and older that reside in the Household;

"Household" means

- (a) a person;
- (b) two or more persons related by blood, marriage, or adoption; or associated through foster care, all living together in one dwelling unit as a single household using common cooking facilities;
- (c) a group of not more than five persons, including boarders, who are not related by blood, marriage, or adoption, or associated through foster care, all living together in one dwelling unit as a single household using common cooking facilities; or
- (d) a combination of (b) and (c), provided that the combined total does not include more than 3 persons unrelated by blood, marriage or adoption or associated through foster care; all living together in one dwelling unit as a single household using common cooking facilities.

In addition, a household may also include up to one Caregiver or nanny;

"Land" means the land described in Item 2 of the Form C to which this Agreement is attached;

"LTO" means the Kamloops Land Title Office or its successor;

"Official Community Plan (OCP)" means the City of Kelowna Official Community Plan Bylaw No. 7600, or its successor bylaw;

"Owner" means the registered owner of the Lands from time to time and any parcels into which the Lands are subdivided;

"Special Needs Individual" means an individual with physical or mental disabilities or illness has special needs respecting the design and construction of the Special Needs Dwelling Unit occupied by that individual, including any individual who is confined to a wheelchair;

"Special Needs Dwelling Unit" means a dwelling designed to accommodate the needs of a Special Needs Individual, which unit may or may not also be an Affordable Ownership Dwelling Unit;

"Starter Home Price" means the prices published annually by the City for:

- (i) basic non-strata titled home
- (ii) basic strata-titled home, and
- (iii) mobile/manufactured home with pad rental.

in the Kelowna market, and which will be derived from the formula set out in Schedule "B" and updated between Census years using the BCCPI;

"Zoning Bylaw" means City of Kelowna Bylaw No. 8000, or its successor bylaw.

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 and Official Community Plan 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
LAND USE RESTRICTIONS**

2.0 The Owner and the City hereby covenant and agree as follows:

- a) The Land must be used only in accordance with this Agreement;
- b) A maximum of 22 Dwelling Units at a density of 0.74 (floor area ratio) shall be built on the Land by the Owner. The number of Affordable Ownership Dwelling Units constructed by the Owner shall be one (1), being 4.5% of the total number of residential units on the Land;

**ARTICLE 3
AFFORDABLE OWNERSHIP DWELLING UNITS
OCCUPATION AND TRANSFER RESTRICTIONS**

3.0 Occupation and Transfer Restrictions - The City and the Owner agree as follows:

- (a) **Transfer** - The Owner must not sell or transfer, or agree to sell or transfer, any interest in an Affordable Ownership Dwelling Unit other than full interest in the fee simple title to that Affordable Ownership Dwelling Unit to a Household that meets the Affordable Ownership criteria;
- (b) **Prospective Purchasers** - The Owner will be solely responsible for screening prospective purchasers of an Affordable Ownership Dwelling Unit to determine whether or not they meet the Affordable Ownership criteria in accordance with this Agreement. For greater certainty, the Owner agrees that the City is not responsible for, and makes no representation to the Owner regarding, the suitability of any prospective purchaser.

-
- (c) **Purchase Price** - The maximum sale price of the Affordable Ownership Dwelling Unit to a Household that meets the Affordable Ownership criteria is:
- (i) the applicable Starter Home Price; or
 - (ii) market value of the Affordable Ownership Dwelling Unit, if the Owner has owned that unit for 10 consecutive years and the Owner has requested the City discharge this Agreement.
- (d) **Notification of this Agreement** - The Owner must disclose in every purchase and sale agreement for the Affordable Ownership Dwelling Unit, the existence of this Agreement and the occupancy and resale price restrictions applicable to that unit, and provide the prospective purchaser with a copy of this Agreement;
- (e) **Occupier criteria** - The Owner agrees that the following apply in respect of those who occupy an Affordable Ownership Dwelling Unit:
- (i) the Owner of the Affordable Ownership Dwelling Unit must be part of the Household that occupies that unit,
 - (ii) the Gross Annual Income of all individuals who occupy the Affordable Ownership Dwelling Unit must not exceed the Affordable Ownership income level, and
 - (iii) Within five days of transfer of the title of an Affordable Ownership Dwelling Unit, the new Owner of that unit must deliver to the City a statutory declaration, substantially in the form attached as Schedule A, sworn by the new Owner under oath before a commissioner for taking affidavits in British Columbia, containing all of the information required to complete the statutory declaration; and
- (f) **No Rental** - The Owner shall not rent or lease the Lands or any Affordable Ownership Dwelling Unit on the Lands.
- 3.1 **Statutory Declaration** - Within five days after receiving notice from the City, the Owner must deliver to the City a statutory declaration, substantially in the form attached as Schedule A, sworn by the Owner, or a knowledgeable director, officer or employee of any corporate Owner, under oath before a commissioner for taking affidavits in British Columbia, containing all of the information required to complete the statutory declaration. The City may request such a statutory declaration no more than four times in any year. The Owner must submit such a statutory declaration a minimum of once a year.

ARTICLE 4 SPECIAL NEEDS UNITS

- 4.1 **Minimum Number of Special Needs Occupants** - The Owner agrees with the City that a Special Needs Unit must be occupied by a Household with at least one Special Needs Individual.
- 4.2 **Affordable Ownership criteria** – The Owners agrees with the City that the provisions in Article 3, above, apply with equal force to Special Needs Units on the Land.
- 4.3 **Damages for Breach** - For each day a Special Needs Unit is occupied in breach of this Agreement, the Owner must pay the City \$100.00 for each day on which the breach has occurred, as liquidated damages and not as a penalty, due and payable at the offices of the City on the last day of the calendar month in which the breach occurred, but the City agrees that this section applies only if the City has given 60 days' written notice to the Owner of

occupancy of the Special Needs Unit in breach of this Agreement and the Owner has not cured that breach before expiry of that 60 days.

**ARTICLE 5
GENERAL**

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

- (a) 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*;
- (b) the City is requiring the Owner to file a notice of housing agreement in the LTO against title to the Land; and
- (c) once such a notice is filed, this Agreement binds all persons who acquire an interest in the Land.

5.2 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.

5.3 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.

5.4 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*.

5.5 – Release – The Owner by this Agreement releases and forever discharges the City and each of its elected officials, officers, directors, employees and agents, and its and their heirs, executors, administrators, personal representatives, successors, and assigns, from and against all claims, demands, damages, actions, or causes of action by reason of or arising out of advice or direction respecting the ownership, lease, operation or management of the Land or the Dwelling Units which has been or at any time after the commencement of this Agreement may be given to the Owner by all or any of them. This clause will survive the termination of this Agreement.

5.6 - Joint Venture – Nothing in this Agreement will constitute the Owner as the agent, joint venturer, or partner of the City or give the Owner any authority to bind the City in any way.

5.7 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.

5.8 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.

5.9 – Equitable Remedies – The Owner acknowledges and agrees that damages would be an inadequate remedy for the City for breach of this Agreement, that the City 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, and further that this clause is reasonable given the public interest in restricting the occupancy and disposition of each Affordable Ownership Dwelling Unit on the Lands in accordance with this Agreement.

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

5.11 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.

5.12 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.

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

5.14 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.

5.15 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.

5.16 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.

GRANT OF PRIORITY

GIVEN THAT:

- A. The Owner (as defined in Item 5 of Part 1 of the *Land Title Act* Form C to which this Agreement is attached) ("Housing Agreement") is the registered owner of the land legally described in Item 2 of Part 1 of the *Land Title Act* Form C to which this Agreement is attached ("Land");
- B. The Owner granted **BANK OF MONTREAL** ("Prior Chargeholder") a mortgage which is registered against the title to the Land in the **KAMLOOPS** Land Title Office ("LTO") under number **KL138138** ("Prior Charge");
- C. By the Housing Agreement, the Owner granted to the City of Kelowna ("Subsequent Chargeholder") a S. 219 covenant, as described in the Housing Agreement, and a rent charge (collectively, "Subsequent Charge"); and
- D. The *Land Title Act* permits the Prior Chargeholder to grant priority over a charge to a subsequent chargeholder,

This Priority Agreement is evidence that, in consideration of \$1.00 paid by the Subsequent Chargeholder to the Prior Chargeholder (the receipt and sufficiency of which are hereby acknowledged), the Prior Chargeholder grants to the Subsequent Chargeholder priority over the Prior Charge and the Prior Chargeholder covenants and agrees to subordinate and postpone all its right, title and interest in and to the Land with the intent and with the effect that the interests of the Subsequent Chargeholder in and under the Subsequent Charge are the same as if the Subsequent Charge had been executed, delivered and registered against the title to the Land before registration of the Prior Charge.

As evidence of their Agreement to be bound by the above terms of this Priority Agreement, the party described in this Priority Agreement as the Prior Chargeholder has executed and delivered the *Land Title Act* Form C to which this Priority Agreement is attached and which forms part of this Priority Agreement.

SCHEDULE A

[AFFORDABLE OWNERSHIP DWELLING UNITS]

CANADA	)	IN THE MATTER OF A HOUSING
	)	AGREEMENT WITH THE CITY OF
PROVINCE OF BRITISH COLUMBIA	)	KELOWNA ("Housing Agreement") for the
	)	land legally described as:
	)	
	)	Lot A, Section 6, Township 26,
	)	Osoyoos Division Yale District Plan 24496

I, _____ [name of New Owner], of _____ [address of New Owner],
British Columbia, [postal code], do solemnly declare:

1. This declaration is made with respect to the Dwelling Unit ("Unit") legally or otherwise described as follows:

Lot A, Section 6, Township 26, ODYD Plan 24496 or 644 Lequime Road
2. That I am the Owner of the Unit and make this declaration to the best of my personal knowledge.
3. This declaration is made pursuant to the Housing Agreement in respect of the Unit.
4. The City's published applicable Starter Home Price for the Unit is \$ _____.
5. For the period from _____, _____ to _____, _____ the Unit was occupied by the following persons, whose names and addresses appear below, and in accordance with the Housing Agreement

[INSERT NAMES AND AGES OF ALL OCCUPANTS WITH ADDRESS OF UNIT].
6. The Annual Gross Income of all of the individuals described in paragraph 5 is \$ _____. This amount does not exceed the income defined under Clause 7 (below).

TERMS OF INSTRUMENT – PART 2

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7. The annual median income of a 2 or more person City of Kelowna household, as determined in accordance with the federal census and updated between census periods using the annual average consumer price index for all items in British Columbia using 1992 = 100 as a base, published by the City is \$_____.
8. I make this solemn declaration conscientiously believing it to be true and knowing that it is of the same force and effect as if made under oath and pursuant to the *Canada Evidence Act*.

SWORN BEFORE ME at the City of Kelowna
in the Province of British Columbia, this
day of _____, 200_____.

A Commissioner for taking affidavits for
British Columbia

~~~~~

Signature of person making  
declaration

**SCHEDULE B**  
**[STARTER HOME PRICE CALCULATION BY CITY]**

“Affordable Ownership” is based on the income level at which a household would be capable of entering the Kelowna ownership market. This is equivalent to the “starter home price” and is derived based on the purchase ability at the median income level for all two or more person households from the most recent Census, assuming 30 % of gross household income expenditure for shelter. The starter home price will be updated annually between Census years using the B.C. Consumer Price Index (BCCPI), be given for a non-strata-titled home, a strata-titled home and a mobile /manufactured home, and be published annually by the City.

On the basis of policy direction in the City of Kelowna Official Community Plan By-law 7600, (policy 8.1.16) the City has committed to calculating and providing the starter home prices on an annual basis published in The Housing Resources Handbook: Benchmarks and Resources for Affordable, Special Needs and Rental Housing. The following Methodology is used to calculate the starter home prices in the City of Kelowna every five years. Between Census years, the numbers for median income and starter home prices are updated annually using the BCCPI

**STARTER HOME PRICE CALCULATION**

| Line              |                                      | Single Family | Strata | Manufactured Home |
|-------------------|--------------------------------------|---------------|--------|-------------------|
| <b>Insert:</b>    |                                      |               |        |                   |
| 1                 | Gross Income                         |               |        |                   |
| 2                 | Mortgage Rate                        |               |        |                   |
| 3                 | Insurance Rate                       |               |        |                   |
| 4                 | Mill Rate                            |               |        |                   |
| 5                 | Property Tax                         |               |        |                   |
| 6                 | Homeowner Grant                      |               |        |                   |
| 7                 | Strata Fees / Mobile Home Pad Rental |               |        |                   |
| 8                 | Annual Heating Costs                 |               |        |                   |
| 9                 | Annual Utility Costs                 |               |        |                   |
| <b>Calculate:</b> |                                      |               |        |                   |
| 10                | Annual Housing Cost (30% of Income)  |               |        |                   |
| 11                | Yearly Mortgage Payment              |               |        |                   |
| 12                | Monthly Mortgage Payment             |               |        |                   |
| 13                | Total Home Financing                 |               |        |                   |
| 14                | Mortgage Insurance Cost              |               |        |                   |
| 15                | Mortgage Financing (95%)             |               |        |                   |
| 16                | Home Price (Starter Home)            |               |        |                   |

The process used to calculate the Starter Home Price in the City of Kelowna is as follows:

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**1. COLLECT THE FOLLOWING DATA FROM THE SOURCES LISTED AND INSERT INTO THE TABLE:****1.1 Gross Income (Line 1)**

- When new Census information is available, the figure for median income of a two or more person household in Kelowna is obtained and used as the gross income. Gross Income is the aggregated taxable income (line 260 of income tax T1 General Form) of all residents 15 years and older residing in the household. Income data recorded by the Census, however, is usually for the year prior to the Census (for example, the 2001 Census recorded 2000 income levels). The income level may therefore need to be updated to the most recent year, using the BCCPI.

**1.2 Mortgage Rate (Line 2)**

- The mortgage rate is equal to the Bank of Canada Prime Lending Rate, plus 3

**1.3 Insurance Rate (Line 3)**

- The insurance rate is equivalent to Canada Mortgage and Housing Corporation (CMHC) mortgage insurance rate for a mortgage with a 5% down payment.

**1.4 Mill Rate (Line 4)**

- The current mill rate for residential taxation used by the City of Kelowna.

**1.5 Property Tax (Line 5)**

- The property tax figure is estimated based on the previous figures used in the table. This figure may be later adjusted based on the outcome of the final calculations

**1.6 Homeowners Grant (Line 6)**

- Homeowner grants are offered by the provincial government amount. Establish the standard grant amount.

**1.7 Strata Fees and/or Pad Rentals (Line 7)**

- Comparing strata fees, as found using MLS listings for Kelowna and/or as indicated by a local realtor, estimate the average strata fee.
- Using sample from mobile home sites in the city, estimate the average mobile home pad rental fees

**1.8 Heating Costs (Line 8)**

- Using local data, determine Heating Costs using CMHC methodologies. Subsequently, heating costs are adjusted in accordance with inflation as determined using the BCCPI percentage change in energy costs from the previous year.

**1.9 Utilities Costs (Line 9)**

- Using local data, determine Utilities Costs using CMHC methodologies. Subsequently, utilities costs are adjusted in accordance with inflation as determined using the BCCPI percentage change in electricity from the previous year. Phone, cable/satellite, and internet costs are not included in the utilities cost calculation.
- Note if there were changes in sewer and water rates from the City and adjust accordingly.

**2. CALCULATE THE FOLLOWING NUMBERS AND INSERT INTO THE TABLE:****2.1 Annual Housing Cost (Line 10)**

- The annual housing cost is based on the assumption that 30% of gross income may be spent on housing.

$$\text{Gross Income (Line 1)} \times 0.30 = \text{Annual Housing Cost}$$

**2.2 Annual Mortgage Payment (Line 11)**

- The annual mortgage payment is equal to the annual housing costs (Line 10) minus the heating costs, utility costs, strata fees/pad rent, and the total property tax payment amount (i.e. property tax minus the homeowner grant).

$$\begin{aligned} &\text{Annual Housing Cost} \\ &- \text{Heating Cost} \\ &- \text{Utility Costs} \\ &- \text{Strata/Pad Rental Fees} \\ &- \text{(Property Tax – Homeowner Grant)} \\ &= \text{Annual Mortgage Payment} \end{aligned}$$

**2.3 Monthly Mortgage Payment (Line 12)**

- The annual mortgage payment is spread out over 12 months:

$$\text{Annual Mortgage Payment} \div 12 = \text{Monthly Mortgage Payment}$$

**2.4 Total Home Financing (Line 13)**

- The total financing required is determined by using a mortgage calculator (such as [http://www.realestatelistings.bc.ca/mortgage\\_calc.htm](http://www.realestatelistings.bc.ca/mortgage_calc.htm)). Assume a 5 year renewable/25 year mortgage, and insert the interest rate as per Line 2. Enter an estimate in the mortgage amount. Adjust the mortgage amount until the monthly payment matches, as close as possible, the monthly mortgage payment in Line 12. This amount is the total financing required.

**2.5 Mortgage Insurance (Line 14)**

- The mortgage insurance amount is calculated, using the insurance rate from Line 3 as follows:

$$\begin{aligned} &\text{mortgage financing (Line 13)} \times \frac{1}{(\text{insurance rate} + 1) \div \text{insurance rate}} \\ &= \text{mortgage insurance (Line 14)} \end{aligned}$$

**2.6 Mortgage Financing (95%) (Line 15)**

- Mortgage Financing (95%) is the home financing required based on a 5% down payment and is calculated as follows:

$$\begin{aligned} &\text{mortgage insurance (Line 14)} \div \text{Insurance Rate (Line 3)} \\ &= \text{mortgage financing at 95% (Line 15)} \end{aligned}$$

2.7 Starter Home Price (Line 16):

- The Starter Home Price is calculated as follows:

$$\frac{\text{Mortgage financing (Line 15)} \times 100}{95} = \text{starter home price}$$

2.8 Confirmation of Starter Home Price

- The starter home price is then confirmed using the mill rate (Line 4) to calculate the property tax as follows:

$$\text{starter home price (Line 16)} \times \text{mill rate (Line 4)} = \text{property tax}$$

- Compare this property tax figure to the property tax figure used in Line 5. If the numbers are not similar, adjust the property tax (Line 5) to number closer to the figure above and repeat the above calculations (Lines 13 through 16).
- Next, using the starter home price, as re-calculated above, work through the table backwards in order to calculate the gross annual income. The gross annual income calculated should be equal to the gross annual income figure representing the median income of a two or more person household in Kelowna (Line 1). If the numbers are not the same, continue to adjust the property tax figure, and repeat the calculations, until the gross annual income figures match.
- Update the figures using the BCCPI if necessary.

**END OF DOCUMENT**

**LAND TITLE ACT**

**FORM C**

(Section 219.81)

Province of

British Columbia

**GENERAL INSTRUMENT – PART 1** (This area for Land Title Office use)

Page 1 of 16 pages

1. APPLICATION: (Name, address, phone number and signature of applicant, applicant's solicitor or agent)  
 BISHOP & COMPANY, Barristers & Solicitors  
 #206 – 347 Leon Avenue, Kelowna, B.C. V1Y 8C7  
 Client No.: 010345 File No.: HP/13239

*Signature of applicant, applicant's solicitor or agent*

2. PARCEL IDENTIFIER(S) AND LEGAL DESCRIPTION(S) OF LAND:\*
- |             |                                       |
|-------------|---------------------------------------|
| (PID)       | (LEGAL DESCRIPTION)                   |
| 005-911-851 | Lot A, Sec 6, Tp 26, ODYD, Plan 24496 |

3. NATURE OF INTEREST:\*

| DESCRIPTION                        | DOCUMENT REFERENCE | PERSON ENTITLED TO INTEREST |
|------------------------------------|--------------------|-----------------------------|
| Section 219 Covenant               | Entire Document    | Transferee                  |
| Priority Agreement granting        |                    |                             |
| Section 219 Covenant priority over | Page 10            | Transferee                  |
| Mortgage KL138138                  |                    |                             |

4. TERMS: Part 2 of this Instrument consists of (select one only)

- (a) Filed Standard Charge Terms  
 (b) Express Charge Terms  
 (c) Release

D.F. No.

Annexed as Part 2

There is no Part 2 of this instrument

A selection of (a) includes any additional or modified terms referred to in Item 7 or in a schedule annexed to this instrument.  
 If (c) is selected, the charge described in Item 3 is released or discharged as a charge on the land described in Item 2.

5. TRANSFEROR(S):\*

**RANCAR SERVICES LTD.** (Inc. # BC0381781), c/o #206 – 347 Leon Avenue,  
 Kelowna, BC V1Y 8C7

6. TRANSFEREE(S): (Including occupation(s), postal address(es) and postal code(s))\*

**CITY OF KELOWNA** a Municipal Corporation having its offices at 1435 Water Street,  
 Kelowna, BC V1Y 1J4

7. ADDITIONAL OR MODIFIED TERMS:\*

N/A

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.

Officer Signature(s)

Execution Date

Party(ies) Signature(s)

HOWARD F. PEEB  
 Barrister & Solicitor  
 #206 – 347 Leon Avenue  
 Kelowna, B.C. V1Y 8C7  
 Phone: 250-861-4022

| Y  | M  | D  |
|----|----|----|
| 06 | 10 | 06 |

**RANCAR SERVICES LTD.**  
 By its authorized signatory

Print Name:

Randy Villeneuve

**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. 1979, C.116, 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.

\* If space insufficient, enter "SEE SCHEDULE" and attach schedule in Form E.

\*\* If space insufficient, continue executions on additional page(s) in Form D.

LAND TITLE ACT  
FORM D  
EXECUTIONS CONTINUED

Page 2 of 16 pages

Officer Signature(s)

Execution Date

Y

M

D

Transferor/Borrower/Party  
Signature(s)

**CITY OF KELOWNA**  
by its authorized signatory(ies):

\_\_\_\_\_  
[Print Name] Mayor

\_\_\_\_\_  
[Print Name] City Clerk

(As to all signatures)



**TITIA TSIKNIS**  
A Commissioner for Taking  
Affidavits for British Columbia  
4720 Kingsway  
Burnaby, BC V5H 4N2

(As to all signatures)

2006 11 28

**BANK OF MONTREAL**  
by its authorized signatory(ies):  
AS TO PRIORITY

  
**D. LODERMEIER**  
Senior Portfolio Manager

\_\_\_\_\_  
[Print Name]

  
\_\_\_\_\_  
[Print Name]

**Chris Robbins**  
Senior Portfolio Manager

**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.

**SECTION 219 COVENANT AND HOUSING AGREEMENT**

THIS AGREEMENT dated for reference \_\_\_\_\_ October 19<sup>th</sup>, 2006 is

**BETWEEN:**

**RANCAR SERVICES LTD.** (Inc. # BC0381781)  
206 - 347 LEON AVE  
KELOWNA, BC V1Y 8C7

("Owner")

**AND:**

**CITY OF KELOWNA**, a local government incorporated pursuant to the *Community Charter* and having its offices at 435 Water Street, Kelowna, B.C. V1Y 1J4

("City")

**WHEREAS:**

- A. The Owner has applied to the City for rezoning to permit the construction of a residential development for Multiple Unit Residential Development, and has consented to the designation of certain lands for affordable housing for in accordance with the City's definitions of affordable housing on certain lands, more particularly described in this Agreement;
- B. 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;
- C. The City may, pursuant to section 905(1) of the *Local Government Act*, enter into an agreement with an owner of land that includes terms and conditions regarding the occupancy, tenure, and availability of the City in respect of the use of land or construction on land;
- D. The Owner and the City wish to enter into this Agreement to provide for affordable ownership and/or 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*;
- E. The City has, by bylaw, authorized the execution of this Agreement and the Owner has duly authorized the execution of this Agreement;

This Agreement is evidence that in consideration of \$1.00 paid by the City to the Owner (the receipt of which is acknowledged by the Owner) and in consideration of the promises exchanged below, the City and Owner agree, as covenants granted by the Owner to the City under section 219 of the *Land Title Act*, and as a housing agreement between the Owner and the City under s. 905(1) of the *Local Government Act*, as follows:

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**ARTICLE 1  
INTERPRETATION**

**1.1 Definitions -**

"Affordable Ownership" means the income level, published annually by the City, at which a Household would be capable of buying a home at the Starter Home Price, and is based on the purchase ability at the median income level from the most recent federal census for all two or more person households, assuming 30% of gross household income expenditure for shelter;

"BCCPI" means the All-Items Consumer Price Index for British Columbia, published from time to time by Statistics Canada, or its successor in function, where 1992 = 100;

"Caregiver" means an individual who provides assistance with the performance of the personal functions and activities necessary for daily living that a person is unable to perform efficiently for himself or herself;

"City" means the City of Kelowna;

"Dwelling Unit" means accommodation providing sleeping rooms, washrooms, and no more than one kitchen, intended for domestic use, and used or intended to be used permanently or semi permanently for a Household.. This use does not include a room in a hotel or a motel;

"Gross Annual Income" means the sum of all taxable incomes, being the amount identified as taxable income on the most recent income tax return (line 260 of the income tax T1 General Form), of all individuals 15 years and older that reside in the Household;

"Household" means

- (a) a person;
- (b) two or more persons related by blood, marriage, or adoption; or associated through foster care, all living together in one dwelling unit as a single household using common cooking facilities;
- (c) a group of not more than five persons, including boarders, who are not related by blood, marriage, or adoption, or associated through foster care, all living together in one dwelling unit as a single household using common cooking facilities; or
- (d) a combination of (b) and (c), provided that the combined total does not include more than 3 persons unrelated by blood, marriage or adoption or associated through foster care; all living together in one dwelling unit as a single household using common cooking facilities.

In addition, a household may also include up to one Caregiver or nanny;

"Land" means the land described in Item 2 of the Form C to which this Agreement is attached;

"LTO" means the Kamloops Land Title Office or its successor;

"Official Community Plan (OCP)" means the City of Kelowna Official Community Plan Bylaw No. 7600, or its successor bylaw;

"Owner" means the registered owner of the Lands from time to time and any parcels into which the Lands are subdivided;

"Special Needs Individual" means an individual with physical or mental disabilities or illness has special needs respecting the design and construction of the Special Needs Dwelling Unit occupied by that individual, including any individual who is confined to a wheelchair;

"Special Needs Dwelling Unit" means a dwelling designed to accommodate the needs of a Special Needs Individual, which unit may or may not also be an Affordable Ownership Dwelling Unit;

"Starter Home Price" means the prices published annually by the City for:

- (i) basic non-strata titled home
- (ii) basic strata-titled home, and
- (iii) mobile/manufactured home with pad rental.

in the Kelowna market, and which will be derived from the formula set out in Schedule "B" and updated between Census years using the BCCPI;

"Zoning Bylaw" means City of Kelowna Bylaw No. 8000, or its successor bylaw.

**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 and Official Community Plan 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  
LAND USE RESTRICTIONS**

**2.0** The Owner and the City hereby covenant and agree as follows:

- a) The Land must be used only in accordance with this Agreement;
- b) A maximum of 22 Dwelling Units at a density of 0.74 (floor area ratio) shall be built on the Land by the Owner. The number of Affordable Ownership Dwelling Units constructed by the Owner shall be one (1), being 4.5% of the total number of residential units on the Land;

**ARTICLE 3  
AFFORDABLE OWNERSHIP DWELLING UNITS  
OCCUPATION AND TRANSFER RESTRICTIONS**

**3.0 Occupation and Transfer Restrictions -** The City and the Owner agree as follows:

- (a) **Transfer -** The Owner must not sell or transfer, or agree to sell or transfer, any interest in an Affordable Ownership Dwelling Unit other than full interest in the fee simple title to that Affordable Ownership Dwelling Unit to a Household that meets the Affordable Ownership criteria;
- (b) **Prospective Purchasers -** The Owner will be solely responsible for screening prospective purchasers of an Affordable Ownership Dwelling Unit to determine whether or not they meet the Affordable Ownership criteria in accordance with this Agreement. For greater certainty, the Owner agrees that the City is not responsible for, and makes no representation to the Owner regarding, the suitability of any prospective purchaser.

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- (c) **Purchase Price** - The maximum sale price of the Affordable Ownership Dwelling Unit to a Household that meets the Affordable Ownership criteria is:
- (i) the applicable Starter Home Price; or
  - (ii) market value of the Affordable Ownership Dwelling Unit, if the Owner has owned that unit for 10 consecutive years and the Owner has requested the City discharge this Agreement.
- (d) **Notification of this Agreement** - The Owner must disclose in every purchase and sale agreement for the Affordable Ownership Dwelling Unit, the existence of this Agreement and the occupancy and resale price restrictions applicable to that unit, and provide the prospective purchaser with a copy of this Agreement;
- (e) **Occupier criteria** - The Owner agrees that the following apply in respect of those who occupy an Affordable Ownership Dwelling Unit:
- (i) the Owner of the Affordable Ownership Dwelling Unit must be part of the Household that occupies that unit,
  - (ii) the Gross Annual Income of all individuals who occupy the Affordable Ownership Dwelling Unit must not exceed the Affordable Ownership income level, and
  - (iii) Within five days of transfer of the title of an Affordable Ownership Dwelling Unit, the new Owner of that unit must deliver to the City a statutory declaration, substantially in the form attached as Schedule A, sworn by the new Owner under oath before a commissioner for taking affidavits in British Columbia, containing all of the information required to complete the statutory declaration; and
- (f) **No Rental** - The Owner shall not rent or lease the Lands or any Affordable Ownership Dwelling Unit on the Lands.
- 3.1 **Statutory Declaration** - Within five days after receiving notice from the City, the Owner must deliver to the City a statutory declaration, substantially in the form attached as Schedule A, sworn by the Owner, or a knowledgeable director, officer or employee of any corporate Owner, under oath before a commissioner for taking affidavits in British Columbia, containing all of the information required to complete the statutory declaration. The City may request such a statutory declaration no more than four times in any year. The Owner must submit such a statutory declaration a minimum of once a year.

#### **ARTICLE 4 SPECIAL NEEDS UNITS**

- 4.1 **Minimum Number of Special Needs Occupants** - The Owner agrees with the City that a Special Needs Unit must be occupied by a Household with at least one Special Needs Individual.
- 4.2 **Affordable Ownership criteria** – The Owners agrees with the City that the provisions in Article 3, above, apply with equal force to Special Needs Units on the Land.
- 4.3 **Damages for Breach** - For each day a Special Needs Unit is occupied in breach of this Agreement, the Owner must pay the City \$100.00 for each day on which the breach has occurred, as liquidated damages and not as a penalty, due and payable at the offices of the City on the last day of the calendar month in which the breach occurred, but the City agrees that this section applies only if the City has given 60 days' written notice to the Owner of

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occupancy of the Special Needs Unit in breach of this Agreement and the Owner has not cured that breach before expiry of that 60 days.

## **ARTICLE 5 GENERAL**

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

- (a) 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*;
- (b) the City is requiring the Owner to file a notice of housing agreement in the LTO against title to the Land; and
- (c) once such a notice is filed, this Agreement binds all persons who acquire an interest in the Land.

**5.2 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.

**5.3 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.

**5.4 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*.

**5.5 – Release** – The Owner by this Agreement releases and forever discharges the City and each of its elected officials, officers, directors, employees and agents, and its and their heirs, executors, administrators, personal representatives, successors, and assigns, from and against all claims, demands, damages, actions, or causes of action by reason of or arising out of advice or direction respecting the ownership, lease, operation or management of the Land or the Dwelling Units which has been or at any time after the commencement of this Agreement may be given to the Owner by all or any of them. This clause will survive the termination of this Agreement.

**5.6 - Joint Venture** – Nothing in this Agreement will constitute the Owner as the agent, joint venturer, or partner of the City or give the Owner any authority to bind the City in any way.

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**5.7 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.

**5.8 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.

**5.9 – Equitable Remedies** – The Owner acknowledges and agrees that damages would be an inadequate remedy for the City for breach of this Agreement, that the City 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, and further that this clause is reasonable given the public interest in restricting the occupancy and disposition of each Affordable Ownership Dwelling Unit on the Lands in accordance with this Agreement.

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

**5.11 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.

**5.12 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.

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

**5.14 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.

**5.15 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.

**5.16 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.

**GRANT OF PRIORITY**

GIVEN THAT:

- A. The Owner (as defined in Item 5 of Part 1 of the *Land Title Act* Form C to which this Agreement is attached) ("Housing Agreement") is the registered owner of the land legally described in Item 2 of Part 1 of the *Land Title Act* Form C to which this Agreement is attached ("Land");
- B. The Owner granted **BANK OF MONTREAL** ("Prior Chargeholder") a mortgage which is registered against the title to the Land in the **KAMLOOPS** Land Title Office ("LTO") under number **KL138138** ("Prior Charge");
- C. By the Housing Agreement, the Owner granted to the City of Kelowna ("Subsequent Chargeholder") a S. 219 covenant, as described in the Housing Agreement, and a rent charge (collectively, "Subsequent Charge"); and
- D. The *Land Title Act* permits the Prior Chargeholder to grant priority over a charge to a subsequent chargeholder,

This Priority Agreement is evidence that, in consideration of \$1.00 paid by the Subsequent Chargeholder to the Prior Chargeholder (the receipt and sufficiency of which are hereby acknowledged), the Prior Chargeholder grants to the Subsequent Chargeholder priority over the Prior Charge and the Prior Chargeholder covenants and agrees to subordinate and postpone all its right, title and interest in and to the Land with the intent and with the effect that the interests of the Subsequent Chargeholder in and under the Subsequent Charge are the same as if the Subsequent Charge had been executed, delivered and registered against the title to the Land before registration of the Prior Charge.

As evidence of their Agreement to be bound by the above terms of this Priority Agreement, the party described in this Priority Agreement as the Prior Chargeholder has executed and delivered the *Land Title Act* Form C to which this Priority Agreement is attached and which forms part of this Priority Agreement.

**SCHEDULE A**

**[AFFORDABLE OWNERSHIP DWELLING UNITS]**

|                              |   |                                                  |
|------------------------------|---|--------------------------------------------------|
| CANADA                       | ) | IN THE MATTER OF A HOUSING                       |
|                              | ) | AGREEMENT WITH THE CITY OF                       |
| PROVINCE OF BRITISH COLUMBIA | ) | KELOWNA ("Housing Agreement") for the            |
|                              | ) | land legally described as:                       |
|                              | ) |                                                  |
|                              | ) | <b>Lot A, Section 6, Township 26,</b>            |
|                              | ) | <b>Osoyoos Division Yale District Plan 24496</b> |

I, \_\_\_\_\_ [name of New Owner], of \_\_\_\_\_ [address of New Owner],  
British Columbia, [postal code], do solemnly declare:

1. This declaration is made with respect to the Dwelling Unit ("Unit") legally or otherwise described as follows:

Lot A, Section 6, Township 26, ODYD Plan 24496 or 644 Lequime Road

2. That I am the Owner of the Unit and make this declaration to the best of my personal knowledge.
3. This declaration is made pursuant to the Housing Agreement in respect of the Unit.
4. The City's published applicable Starter Home Price for the Unit is \$ \_\_\_\_\_.
5. For the period from \_\_\_\_\_, \_\_\_\_\_ to \_\_\_\_\_, \_\_\_\_\_ the Unit was occupied by the following persons, whose names and addresses appear below, and in accordance with the Housing Agreement

[INSERT NAMES AND AGES OF ALL OCCUPANTS WITH ADDRESS OF UNIT].

6. The Annual Gross Income of all of the individuals described in paragraph 5 is \$ \_\_\_\_\_. This amount does not exceed the income defined under Clause 7 (below).



**SCHEDULE B**  
**[STARTER HOME PRICE CALCULATION BY CITY]**

"Affordable Ownership" is based on the income level at which a household would be capable of entering the Kelowna ownership market. This is equivalent to the "starter home price" and is derived based on the purchase ability at the median income level for all two or more person households from the most recent Census, assuming 30 % of gross household income expenditure for shelter. The starter home price will be updated annually between Census years using the B.C. Consumer Price Index (BCCPI), be given for a non-strata-titled home, a strata-titled home and a mobile /manufactured home, and be published annually by the City.

On the basis of policy direction in the City of Kelowna Official Community Plan By-law 7600, (policy 8.1.16) the City has committed to calculating and providing the starter home prices on an annual basis published in The Housing Resources Handbook: Benchmarks and Resources for Affordable, Special Needs and Rental Housing. The following Methodology is used to calculate the starter home prices in the City of Kelowna every five years. Between Census years, the numbers for median income and starter home prices are updated annually using the BCCPI

**STARTER HOME PRICE CALCULATION**

| Line       |                                        | Single<br>Family | Strata | Manufactured<br>Home |
|------------|----------------------------------------|------------------|--------|----------------------|
| Insert:    |                                        |                  |        |                      |
| 1          | Gross Income                           |                  |        |                      |
| 2          | Mortgage Rate                          |                  |        |                      |
| 3          | Insurance Rate                         |                  |        |                      |
| 4          | Mill Rate                              |                  |        |                      |
| 5          | Property Tax                           |                  |        |                      |
| 6          | Homeowner Grant                        |                  |        |                      |
| 7          | Strata Fees / Mobile Home Pad Rental   |                  |        |                      |
| 8          | Annual Heating Costs                   |                  |        |                      |
| 9          | Annual Utility Costs                   |                  |        |                      |
| Calculate: |                                        |                  |        |                      |
| 10         | Annual Housing Cost (30% of<br>Income) |                  |        |                      |
| 11         | Yearly Mortgage Payment                |                  |        |                      |
| 12         | Monthly Mortgage Payment               |                  |        |                      |
| 13         | Total Home Financing                   |                  |        |                      |
| 14         | Mortgage Insurance Cost                |                  |        |                      |
| 15         | Mortgage Financing (95%)               |                  |        |                      |
| 16         | Home Price (Starter Home)              |                  |        |                      |

The process used to calculate the Starter Home Price in the City of Kelowna is as follows:

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**1. COLLECT THE FOLLOWING DATA FROM THE SOURCES LISTED AND INSERT INTO THE TABLE:**

**1.1 Gross Income (Line 1)**

- When new Census information is available, the figure for median income of a two or more person household in Kelowna is obtained and used as the gross income. Gross Income is the aggregated taxable income (line 260 of income tax T1 General Form) of all residents 15 years and older residing in the household. Income data recorded by the Census, however, is usually for the year prior to the Census (for example, the 2001 Census recorded 2000 income levels). The income level may therefore need to be updated to the most recent year, using the BCCPI.

**1.2 Mortgage Rate (Line 2)**

- The mortgage rate is equal to the Bank of Canada Prime Lending Rate, plus 3

**1.3 Insurance Rate (Line 3)**

- The insurance rate is equivalent to Canada Mortgage and Housing Corporation (CMHC) mortgage insurance rate for a mortgage with a 5% down payment.

**1.4 Mill Rate (Line 4)**

- The current mill rate for residential taxation used by the City of Kelowna.

**1.5 Property Tax (Line 5)**

- The property tax figure is estimated based on the previous figures used in the table. This figure may be later adjusted based on the outcome of the final calculations

**1.6 Homeowners Grant (Line 6)**

- Homeowner grants are offered by the provincial government amount. Establish the standard grant amount.

**1.7 Strata Fees and/or Pad Rentals (Line 7)**

- Comparing strata fees, as found using MLS listings for Kelowna and/or as indicated by a local realtor, estimate the average strata fee.
- Using sample from mobile home sites in the city, estimate the average mobile home pad rental fees

**1.8 Heating Costs (Line 8)**

- Using local data, determine Heating Costs using CMHC methodologies. Subsequently, heating costs are adjusted in accordance with inflation as determined using the BCCPI percentage change in energy costs from the previous year.

**1.9 Utilities Costs (Line 9)**

- Using local data, determine Utilities Costs using CMHC methodologies. Subsequently, utilities costs are adjusted in accordance with inflation as determined using the BCCPI percentage change in electricity from the previous year. Phone, cable/satellite, and internet costs are not included in the utilities cost calculation.
- Note if there were changes in sewer and water rates from the City and adjust accordingly.

**2. CALCULATE THE FOLLOWING NUMBERS AND INSERT INTO THE TABLE:****2.1 Annual Housing Cost (Line 10)**

- The annual housing cost is based on the assumption that 30% of gross income may be spent on housing.

$$\text{Gross Income (Line 1)} \times 0.30 = \text{Annual Housing Cost}$$

**2.2 Annual Mortgage Payment (Line 11)**

- The annual mortgage payment is equal to the annual housing costs (Line 10) minus the heating costs, utility costs, strata fees/pad rent, and the total property tax payment amount (i.e. property tax minus the homeowner grant).

$$\begin{aligned} &\text{Annual Housing Cost} \\ &- \text{Heating Cost} \\ &- \text{Utility Costs} \\ &- \text{Strata/Pad Rental Fees} \\ &- \text{(Property Tax – Homeowner Grant)} \\ &= \text{Annual Mortgage Payment} \end{aligned}$$

**2.3 Monthly Mortgage Payment (Line 12)**

- The annual mortgage payment is spread out over 12 months:

$$\text{Annual Mortgage Payment} \div 12 = \text{Monthly Mortgage Payment}$$

**2.4 Total Home Financing (Line 13)**

- The total financing required is determined by using a mortgage calculator (such as [http://www.realestatelistings.bc.ca/mortgage\\_calc.htm](http://www.realestatelistings.bc.ca/mortgage_calc.htm)). Assume a 5 year renewable/25 year mortgage, and insert the interest rate as per Line 2. Enter an estimate in the mortgage amount. Adjust the mortgage amount until the monthly payment matches, as close as possible, the monthly mortgage payment in Line 12. This amount is the total financing required.

**2.5 Mortgage Insurance (Line 14)**

- The mortgage insurance amount is calculated, using the insurance rate from Line 3 as follows:

$$\begin{aligned} &\text{mortgage financing (Line 13)} \times \frac{1}{(\text{insurance rate} + 1) \div \text{insurance rate}} \\ &= \text{mortgage insurance (Line 14)} \end{aligned}$$

**2.6 Mortgage Financing (95%) (Line 15)**

- Mortgage Financing (95%) is the home financing required based on a 5% down payment and is calculated as follows:

$$\begin{aligned} &\text{mortgage insurance (Line 14)} \div \text{Insurance Rate (Line 3)} \\ &= \text{mortgage financing at 95% (Line 15)} \end{aligned}$$

2.7 Starter Home Price (Line 16):

- The Starter Home Price is calculated as follows:

$$\frac{\text{Mortgage financing (Line 15)} \times 100}{95} = \text{starter home price}$$

2.8 Confirmation of Starter Home Price

- The starter home price is then confirmed using the mill rate (Line 4) to calculate the property tax as follows:

$$\text{starter home price (Line 16)} \times \text{mill rate (Line 4)} = \text{property tax}$$

- Compare this property tax figure to the property tax figure used in Line 5. If the numbers are not similar, adjust the property tax (Line 5) to number closer to the figure above and repeat the above calculations (Lines 13 through 16).
- Next, using the starter home price, as re-calculated above, work through the table backwards in order to calculate the gross annual income. The gross annual income calculated should be equal to the gross annual income figure representing the median income of a two or more person household in Kelowna (Line 1). If the numbers are not the same, continue to adjust the property tax figure, and repeat the calculations, until the gross annual income figures match.
- Update the figures using the BCCPI if necessary.

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