

CITY OF KELOWNA BYLAW NO. 9889

Housing Agreement Authorization Bylaw Witmar Developments Ltd (Witmar Holdings Ltd) – 1459 and 1469 KLO Road

Whereas pursuant to Section 905 of the *Local Government Act*, a local government may, by bylaw, enter into a housing agreement.

Therefore, the Municipal Council of the City of Kelowna, in open meeting assembled, enacts as follows:

1. The Municipal Council hereby authorizes the City of Kelowna to enter into a Housing Agreement with Witmar Developments Ltd for the lands known as:

Lot 1, District Lot 131, ODYD, Plan 13798, except plan KAP79224; and
Lot 2, District Lot 131, ODYD, Plan 13798 except plan KAP79225

located on KLO Road, Kelowna, B.C., a true copy of which is attached to and forms part of this bylaw as Schedule "A".

2. The Mayor and City Clerk are hereby authorized to execute the attached agreement as well as any conveyances, deeds, receipts or other documents in connection with the attached agreement.
3. This bylaw shall come into full force and effect and is binding on all persons as and from the date of adoption.

Read a first, second and third time by the Municipal Council this 5th day of November, 2007.

Adopted by the Municipal Council of the City of Kelowna this day of , 2007.

Mayor

City Clerk

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 ⁹15 pages

1. APPLICATION: (Name, address, phone number and signature of applicant, applicant's solicitor or agent)
 Veronica Carson, Agent (Client NO. 10565)
DOAK SHIRREFF LLP, Barristers and Solicitors
 #200, 537 Leon Avenue, Kelowna, BC V1Y 2A9
 Telephone: (250) 763-4323 File: 015-112157/vc

signature of applicant, applicant's solicitor or agent

2. PARCEL IDENTIFIER(S) AND LEGAL DESCRIPTION(S) OF LAND:*
- | (PID) | (LEGAL DESCRIPTION) |
|-------------|--|
| 009-163-972 | Lot 1, DL 131, ODYD, Plan 13798 |
| 009-163-999 | Lot 2, DL 131, ODYD, Plan 13798 except Plan KAS79225 |

3. NATURE OF INTEREST:*
- | DESCRIPTION | DOCUMENT REFERENCE | PERSON ENTITLED TO INTEREST |
|----------------------|--------------------|-----------------------------|
| Section 219 Covenant | Entire Instrument | Transferee |

4. TERMS: Part 2 of this Instrument consists of (select one only)
- | | | |
|---------------------------------|----------|---------------------------------------|
| (a) Filed Standard Charge Terms | | D.F. No. |
| (b) Express Charge Terms | <u>X</u> | Annexed as Part 2 |
| (c) Release | | 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):*
WITMAR DEVELOPMENTS LTD., of 1891 Parkinson Way, Kelowna, BC V1Y 7V6
 (Inc. No. BC0711925)

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:*

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

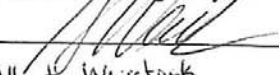
Party(ies) Signature(s)



GRANT SHIRREFF
 BARRISTER & SOLICITOR
 200 - 537 LEON AVE.
 KELOWNA, BC V1Y 2A9

Y	M	D
07	10	23

WITMAR DEVELOPMENTS LTD.

by its authorized signatory:


 Albert Weissstock


 Tony Weisstok

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.

FORM D

EXECUTIONS CONTINUED

Page 2 of 9 Pages

Officer Signature(s)

Execution Date

Party(ies) Signature(s)

Y	M	D
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THE CITY OF KELOWNA
by its authorized signatory(ies)

Mayor: _____

Clerk: _____

as to all signatures

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.

SECTION 219 COVENANT AND HOUSING AGREEMENT

THIS HIGHWAY RESERVATION AGREEMENT made the ____ day of July, 20097

BETWEEN:

WITMAR DEVELOPMENTS LTD. (Inc. NO. BC0711925)
of 1891 Parkinson Way
Kelowna, BC V1Y 7V6

(the "Owner")

OF THE FIRST PART

AND:

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

(the "City")

OF THE SECOND PART

GIVEN THAT:

- A. The Owner has applied to the City for rezoning to permit the construction of 224 units of multiple unit residential development for multiple Unit Residential Development and has consented to the designation of certain lands for affordable housing 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 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 section 90 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 the 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 section 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.

“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.

“Starter Home Price” means the price 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 corresponding 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 including 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 replacement, 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 any 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 reedit 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. 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 TwoHundred Twenty Four (224) Dwelling Units at a density of 1.05 (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 Twelve (12) being 5.4% of the total number of residential units on the Lands; and
 - (c) The Owner acknowledges that the registration of this Affordable Housing Agreement will allow the City to grant a density bonus of 0.10.

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

3. 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 the 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 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 (5) days of transfer of 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 (5) 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 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 agree with the City that the provisions of 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, by the City agrees that this section applies only if the City has give 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 under s. 906 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 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 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 advise 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 Owners 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 a 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 Agreement – 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 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.

**SCHEDULE A
(AFFORDABLE OWNERSHIP DWELLING UNITS)**

CANADA)	IN THE MATTER of a Housing Agreement with the City of Kelowna ("Housing Agreement" for the land legally described as (Insert legal)
)	
BRITISH COLUMBIA)	
)	

I, _____, of _____, do
solemnly declare:

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

(Insert legal)

2. That I am the Owner of the Unit and make this declaration to the best of my personal knowledge.

or

2. That I am the _____ (director, officer, employee) of the owner of the Unit and (make
this declaration to the best of my personal knowledge) (or have been informed by _____ and
believe the statements in this declaration to be true.)

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 the individuals described in paragraph 5 is \$ _____. This
amount does not exceed the income defined under Clause 7 (Below).

7. The annual median income of 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*.