
CITY OF KELOWNA

MEMORANDUM

Date: February 24, 2009
File No.: 3010-01

To: City Manager

From: Community Planning Manager

Subject: Ownership Housing Agreements

RECOMMENDATION:

THAT Council direct staff to use the template attached (see Appendix 1) to the February 24, 2009 report from the Community Sustainability Division as the basis for future ownership housing agreements.

BACKGROUND:

The City adopted definitions of affordable and core needs (low income) housing into the OCP in 2000. The corresponding numbers for these policies are updated annually and published in the Housing Resources Handbook¹

Work of the City's former Community Housing Needs Committee, stakeholder and public consultation, combined with research conducted by the City, recognized different levels of affordability and decided that entering the ownership market was an important, although lesser component of the needs of the Kelowna community for affordable housing. Low income or core need and affordable rental housing is where the majority of the need lies, but this requires multiple partners, including all levels of government, in order to reach the affordability requirements of those in need. Any housing that is intended to meet the City's acceptance as affordable housing requires a housing agreement to be registered on title (except in cases where land is being leased by the City and these matters can be addressed in the lease document). One way to achieve some affordable housing is by requiring it to be provided in return for increases in density within new development. There has been a keen focus on this approach in the recent past, even though it comprises a small piece of the equation in overall efforts to increase the affordable housing supply. In total 70 affordable dwellings have been committed with the use of housing agreements, 20 of which are rental, the other 50 are owner-occupied units. Also about \$539,000 in total has been contributed towards the Housing Opportunities Reserve Fund.

In addition Kelowna has the following:

- 289 rental dwellings in partnership with Provincial and Federal funding on City-owned land – 209 in progress and 80 built;
- 127 rental dwellings in consideration for rental housing grants from the City;
- 23 City owned homes committed for affordable rental housing;

¹ To find this, go to the City website: www.kelowna.ca and select under "Residents" "Planning", then "Community Planning". the document is on the right-hand side of the page. The link is below:
<http://www.kelowna.ca/CityPage/Docs/PDFs//Community%20Planning/Housing%20Resources%20Handbook.pdf>



- 650 subsidized rental family dwellings;
- 1365 units of subsidized seniors rental accommodation;
- 201 subsidized rental dwellings for non-seniors with disabilities;
- 229 homeless shelter spaces, including cold-wet weather spaces (one youth shelter in City owned building); and
- 269 units of subsidized transitional rental housing.

Ownership housing is a small piece of the affordability equation.

There have been several requests for changes to the existing housing agreement. These are coming from the Housing Committee, City Council, CMHC (Canada Mortgage and Housing Corporation), lenders, and the development community. The changes that have been requested and are proposed are as follows:

- make the ownership affordability requirement of an ownership agreement effective in perpetuity, as it is for rental agreements. Prior to this there was a desire for the agreement to allow owners to realize market value for their investment after 10 years;
- update the information on how to calculate affordability to reflect the information most currently used;
- streamline the agreement to be specific to ownership (it had been set up to cover special needs housing as well);
- make provision for mortgage default situations so that the dwellings will be eligible for CMHC mortgage insurance and be more acceptable to lenders;
- require a payment to the City's Housing Opportunities Reserve Fund in the event that a dwelling must be sold at market value to address a mortgage default situation when there is excess revenue in the amount of the difference between the price the home was sold for and the price identified as the affordable purchase price by the City, after the outstanding mortgage and associated costs have been paid to the lender.

The above-noted changes are reflected in a revised housing agreement (see Appendix 1 attached to this report).

INTERNAL CIRCULATION TO:

Building and Real Estate Services
City Clerk / Legislative Services
Housing Committee (reviewed Housing Agreement)

EXTERNAL AGENCY/PUBLIC COMMENTS:

Canada Mortgage and Housing Corporation was consulted regarding the format of the City's affordable ownership housing agreements. The agency had concerns over mortgage insurance for dwellings that are subject to housing agreements and wanted the specific case of mortgage default situations to clearly cover the needs of the lender. A letter is attached outlining changes that CMHC wanted made to the agreement. These changes have been incorporated.

LEGAL/STATUTORY AUTHORITY:

Local Government Act S. 904 & 905

LEGAL/STATUTORY PROCEDURAL REQUIREMENTS:

Housing Opportunities Reserve Fund By-law 8593

EXISTING POLICY:

Strategic Plan

Goal #3 - To foster the social and physical well-being of residents and visitors.

Objective #4 – Realize construction of housing forms and prices that meet the needs of Kelowna residents.

- 3.4.1 Work in partnership with housing organizations and finance institutions to monitor the range of housing options required in the City.
- 3.4.2 Identify ways to establish partnerships with builders, developers and other levels of government in an effort to use targeted City owned land, existing resources and legislative tools to influence the supply and diversity of housing and to increase the supply of affordable housing.

Official Community Plan – Chapter 8

8.1.16 **Affordability Benchmarks.** Affordability benchmarks will be published annually in information bulletins, using accepted methodologies and data from Statistics Canada, BC Statistics and Canada Mortgage and Housing Corporation. They are based on the following criteria:

Rental: Affordable rents will be the average rents for Kelowna from the annual Canada Mortgage and Housing Corporation (CMHC) Rental Market Report;

Owner: Ownership affordability is based on the income level at which a household would be capable of entering the 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 (CPI), be published annually by the City and be given for a non-strata-titled home, a strata-titled home and a mobile / manufactured home;

8.1.17 **Core Need:** Consider, based on data from Statistics Canada or Canada Mortgage and Housing Corporation (CMHC) or British Columbia Housing Management Corporation (BCMHC), households to be at core need for housing when they meet the following criteria:

- o Qualify as at or below core need income threshold (CNIT) developed by CMHC and used by the British Columbia Housing Management Commission for Kelowna, and/or;
- o Household income falls at or below Low Income Cut-Off level defined by Statistics Canada for urban areas greater than 100,000 people, based on household size, and/or;
- o Household is receiving BC income assistance for Welfare to Work or Disability Benefits or qualifies for Targetted Rent Subsidy Programs (TRSP) operated by BC Housing, or dwelling is built with senior government funding to be affordable;

The City will publish the above information by available means, and it will be current;

8.1.18 **Housing Agreements.** Support the use of housing agreements to assist in creating affordable and special needs housing.

8.1.19 **Housing Reserve Fund.** Continue to support the housing reserve fund, using available monies from: annual budget allocations, voluntary contributions from other agencies and the public, a portion of the proceeds of the sale of surplus municipally-owned land, land lease revenues, and a proportion of the sale of market units on City-owned lands;

8.1.20 **Use of Housing Opportunities Reserve Fund.** Use the housing opportunities reserve fund for the purpose of acquiring lands to be leased or purchased from the City by non-profit groups or developers to provide housing by means including public/private partnership agreements, subject to the criteria specified in the Housing Opportunities Reserve Fund Bylaw. The fund may also be used to provide grants to affordable or low income housing projects that are subsidized by the provincial or federal governments, or both, as set out in the Housing Opportunities Reserve Fund Bylaw

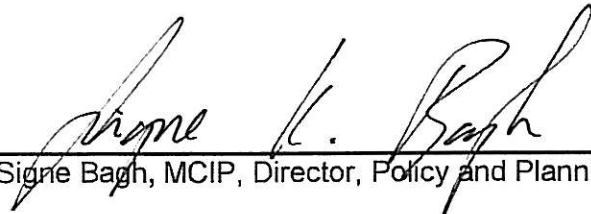
Considerations that were not applicable to this report:

- FINANCIAL/BUDGETARY CONSIDERATIONS
- PERSONNEL IMPLICATIONS
- TECHNICAL REQUIREMENTS
- COMMUNICATIONS CONSIDERATIONS
- ALTERNATE RECOMMENDATION

Submitted by:

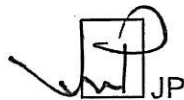


Theresa Eichler, Community Planning Manager



Signe Bagh, MCIP, Director, Policy and Planning

Approved for Inclusion:



Attachments:

- Housing Agreement Template (ownership)
- Letter from CMHC



1111 WEST GEORGIA, SUITE 200
VANCOUVER, BC
V6E 4S4

1111 CHEMIN GEORGIA O, PORTE 200
VANCOUVER, BC
V6E 4S4

PROTECTED - Advice/Recommendations

February 18, 2009

Ms. Theresa Eichler
Community Planning Manager
City of Kelowna, 1435 Water St., City Hall
Kelowna, B.C., V1Y 5M3

Dear, Ms. Eichler

Re: City of Kelowna Section 219 Covenant

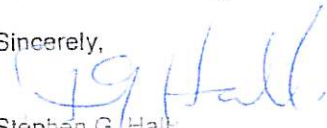
Theresa, we have been talking about this matter so long that hopefully we are now close to resolving it. After consulting our underwriting staff and legal counsel we have the following comments on the wording of the draft Section 219 Covenant sent to us.

First of all, we can only allow a grace period of 60 days to remedy the default after the notice of default has been given to the Insurer and the City. While we are prepared to allow a 60 day grace period, once that period is passed all restrictions must be waived such that a Lender for a CMHC insured mortgage may dispose of a property free and clear of all restrictions. The Lender must be left in a position to fully recover the amounts owed under the mortgage and any restrictions on the property will impede the Lender's ability to do this. This means that we cannot agree to paragraph (c) in Schedule C.

In several places in the document there is reference to the situation where, for whatever reason, the affordable units are sold for fair market value, and the owner agrees to assign the excess revenue from the sale to the City. There is a subsequent definition of what the excess revenue would be. In the case of default and foreclosure there are inevitable costs that the lender and/or the insurer must deal with. These cost are primarily interest costs on the mortgage but there are also other costs. Given the objectives of you program, which we strongly support, we are prepared to assign excess revenue from these sales to the City, however, we can not agree to your definition. The surplus needs to be defined as the fair market price less the outstanding mortgage balance, including costs.

We have a similar concern related to the above, regarding the wording in Schedule C, paragraph (b). It should be clear that when there is a sale to a qualified purchaser during the 60 day period that the Lender must be paid the outstanding mortgage amount, and any other outstanding costs, in order for the mortgage to be discharged and for the covenant to remain in place.

We trust these changes are acceptable to you.

Sincerely,

Stephen G. Hall
Corporate Representative

LAND TITLE ACT

FORM C

(Section 219.81)

Province of British Columbia

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

1. APPLICATION: (Name, address, phone number and signature of applicant, applicant's solicitor or agent)

signature of applicant, applicant's solicitor or agent

2. PARCEL IDENTIFIER(S) AND LEGAL DESCRIPTION(S) OF LAND:* (PID) (LEGAL DESCRIPTION) [INSERT LEGAL DESCRIPTION]

Table with 3 columns: DESCRIPTION, DOCUMENT REFERENCE, PERSON ENTITLED TO INTEREST. Row 1: Section 219 Covenant, Entire Document, Transferee

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

5. TRANSFEROR(S):* [INSERT OF DEVELOPER/OWNER] [INSERT NAME OF BANK/FINANCIAL INSTITUTION] AS TO PRIORITY

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)

Table for Execution Date with columns Y, M, D

[DEVELOPER/OWNER]

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 E

SCHEDULE

ENTER THE REQUIRED INFORMATION IN THE SAME ORDER AS THE INFORMATION MUST APPEAR ON THE FREEHOLD TRANSFER FORM, MORTGAGE FORM OR GENERAL DOCUMENT FORM

Officer Signature(s)

Execution Date

Party(ies) Signature(s)

Y	M	D

CITY OF KELOWNA by its authorized signatories:

_____ Mayor

_____ City Clerk

AS TO BOTH SIGNATURES

Officer Signature(s)

Execution Date

Party(ies) Signature(s)

Y	M	D

[INSERT BANK ETC.]
AS TO PRIORITY

AS TO BOTH 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.

PART 2 - TERMS OF INSTRUMENT

SECTION 219 COVENANT AND HOUSING AGREEMENT

THIS AGREEMENT dated for reference _____, 2004 is

BETWEEN:

[DEVELOPER]
[Insert Address]

("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")

GIVEN THAT:

- A. The Owner has applied to the City for rezoning to permit the construction of a residential development for _____ [*Multiple unit residential development/ or residential lots in a strata 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;

"Affordable Ownership Dwelling Units" means dwellings sold for 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;

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

"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;

"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 _____ Dwelling Units at a density of _____ (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 _____, being _____% of the total number of residential units on the Land; and
 - (c) The Owner acknowledges that the registration of this Affordable Housing Agreement will allow the City to grant a density bonus of _____.

**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 in the case of a mortgage default in accordance with the provisions of Section 3.2 of 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.

3.2 Mortgages and Mortgage Insurers - If required by the Qualified Purchaser and his/her mortgagee and mortgage insurer (if any), the City will enter into an agreement regarding a mortgage of the Affordable Ownership Dwelling Unit on the terms set out in Schedule "C", including that if for whatever reason, an Affordable Ownership Dwelling Unit is sold for fair market value, the Owner agrees to assign any excess revenue from the sale to the City for its affordable housing fund. Excess revenue would represent the fair market price less the maximum sale price in this Agreement and ensuring that the outstanding mortgage balance, including costs, are covered and paid to the lender, .

ARTICLE 4 GENERAL

4.1 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 will 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.

4.2 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.

4.3 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.

4.4 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*.

4.5 - 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.

4.6 - 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.

4.7 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.

4.8 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.

4.9 - 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.

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

4.11 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.

4.12 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.

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

4.14 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.

4.15 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.

4.16 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 _____ ("Prior Chargeholder") a mortgage which is registered against the title to the Land in the _____ Land Title Office ("LTO") under number _____ ("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 [INSERT LEGAL]

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 DESCRIPTION AND CIVIC ADDRESS].

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

[or]
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 of 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 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 _____)
_____ in the _____)
_____, this ___ day of _____)
_____, _____.)
) _____)
) **Signature of person making**)
) **declaration**)
A Commissioner for taking affidavits for)
British Columbia)

SCHEDULE B

[AFFORDABLE OWNERSHIP DWELLING UNITS / 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
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 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:

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.

Gross Income (Line 1) x 0.30 = 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). 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:

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

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:

starter home price (Line 16) x mill rate (Line 4) = 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.

SAMPLE ONLY

The following is the starter home price calculation, based on the median income figure for a Kelowna 2 or more person household obtained from the 2006 Census. Income from the Census was for the year 2005 and has been updated using the BC Consumer Price Index to 2007. All the other calculations are based on 2007 rates (e.g. mortgage, mortgage insurance, property tax, utility costs, strata fees).

STARTER HOME CALCULATION

Line		Single Family	Strata	Manufactured Home
Insert:				
1	Gross Income	63426	63426	63426
2	Mortgage Rate (5 year)	0.0775	0.0775	0.0775
3	Insurance Rate	3.1%	3.1%	3.1%
4	Mill Rate	0.0056898	0.0056898	0.0056898
5	Property Tax	1182.72	1115.39	1064.56
6	Homeowner Grant	570	570	570
7	Strata Fees / Mobile Home Pad Rental	0	2100	3600
8	Annual Heating Costs	2012	2012	2012
9	Annual Utility Costs	1947	1947	1947
Calculate:				
10	Annual Housing Cost (30% of Income)	19027.80	19027.80	19027.80
11	Yearly Mortgage Payment	14456.08	12423.41	10974.24
12	Monthly Mortgage Payment	1204.67	1035.28	914.52
13	Total Home Financing	203,595	192,005	183,255
14	Mortgage Insurance Cost	6121.68	5773.17	5510.10
15	Mortgage Financing (95%)	197,473.65	186,231.35	177,745.00
16	Home Price (Starter Home)	207,867.00	196,033.00	187,100.00

Calculation to Update Starter Home Prices for 2008

In 2008, the numbers in the table (page 2) are updated, as in step 1, to generate the following numbers:

2008 median income = 2007 median income (\$63426 X 1.021 (based on BCCPI) = \$64,758

Single Family Starter Home 2008 = \$207,867 X 1.021 = \$212,232

Strata Titled Starter Home 2008 = \$196,033. X 1.021 = \$200,150

Mobile / Modular Starter Home 2003 = \$187,100. X 1.021 = \$191,029

**SCHEDULE C -
MORTGAGE and MORTGAGE INSURER AGREEMENT TERMS**

In the event that an Owner, who is a Qualified Purchaser, enters into a mortgage in respect of an Affordable Ownership Dwelling Unit, the Owner, the Lender, the Insurer, and the City agree to the following terms:

In this agreement:

"Lender" means a mortgagee or holder of a financial charge that is registered against the title to the Affordable Ownership Dwelling Unit;

"Insurer" means a company or organization that has entered into a mortgage default insurance agreement or mortgage loan insurance arrangement with a Lender and an Owner; and

"Owner" means the current Qualified Purchaser in possession of the Affordable Housing Unit;

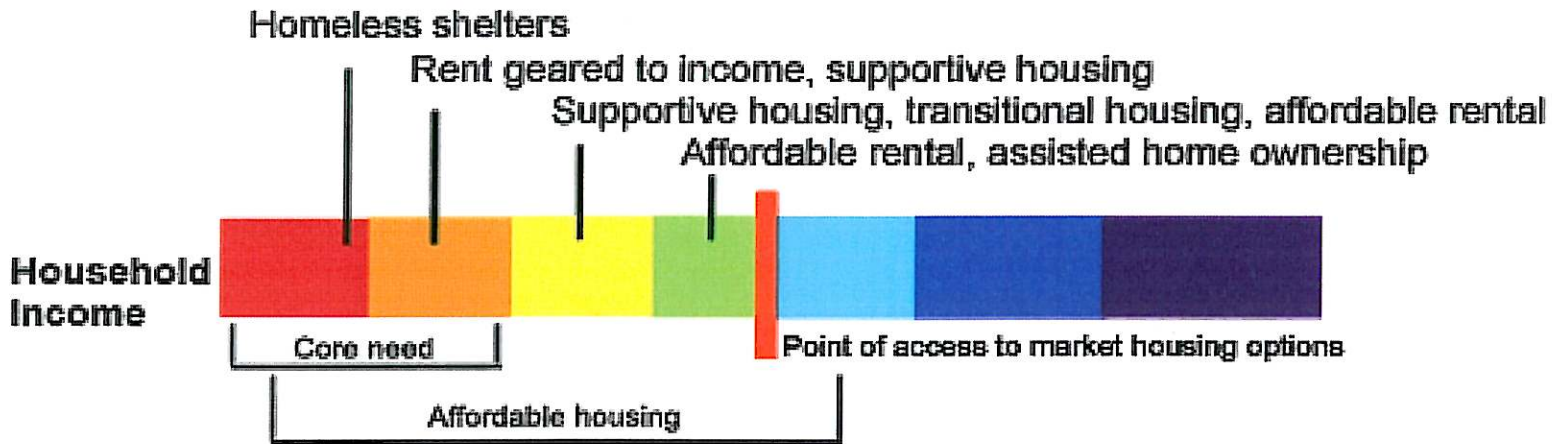
"Property" means the Affordable Ownership Dwelling Unit and any real property upon which it is located.

In the event of default by the Owner under the mortgage:

- (a) the Lender must advise the Insurer and the City that an event of default has occurred no later than 60 days after the default; failure to deliver the notice within this period postpones the Lender's ability to enforce its rights under the mortgage until such notice has been delivered;
- (b) following the notice of mortgage default, the City will have an exclusive right, until that day that is sixty days after the Lender delivers notice as set out in section 2(a) to the City to locate a new Qualified Purchaser who will buy the Property from the Owner. If the City is able to find a new Qualified Purchaser in this time period, the City will make arrangements between the Owner and the new Qualified Purchaser to purchase the Property for the maximum sale price in the Housing Agreement, close the transaction within a reasonable time (not more than two months), and pay the Lender the outstanding mortgage amount and any other outstanding costs, and upon receipt of such funds the Lender will agree to discharge the mortgage so that the sale can take place;
- (c) If the City is not able to arrange a sale under (b) above, the Lender and/or Insurer may take the usual steps to enforce the rights under the mortgage and sell the property for fair market value for the Property. Once the Lender and/or the Insurer has signed a sale agreement with an arm's length purchaser for fair market value for the Property, then the Lender and/or the Insurer will sell the Property at fair market value and the City will discharge the Housing Agreement and Section 219 Covenant from title to the Property; and
- (d) If the Property is sold for fair market value under paragraph (c) of the Schedule C, the Owner will agree to assign the excess amount from the fair market value sale, being the fair market price and ensuring that the outstanding mortgage, including all costs, is paid to the lender, less the maximum sale price in the Housing Agreement, to the City for its Housing Opportunities Reserve Fund. Upon receipt of the appropriate documents of assignment from the Owner, the Lender agrees to pay that excess amount to the City. The parties agree that this provision is fair having regard to the City discharging the Housing Agreement from title to the Property and losing the community benefit of the Affordable Ownership Dwelling Unit.

END OF DOCUMENT

HOUSING CONTINUUM



- 229 homeless shelter spaces
- 269 units of subsidized transitional rental housing.
- ❖ 289 rentals with Provincial & Federal funding on City-owned land
- 650 subsidized rental family dwellings;
- 1365 units of subsidized seniors rental accommodation;
- 201 subsidized rental dwellings for non-seniors with disabilities
- ❖ 127 rental dwellings for rental housing grants from the City
- ❖ 23 City owned homes committed for affordable rental housing;
- 20 affordable rentals in Housing Agreements
- 50 starter homes in Housing Agreements

COLOURS BEHIND TEXT SHOW WHERE THE HOUSING FITS IN THE HOUSING CONTINUUM. SOME RENTAL HOUSING MAY FIT IN MORE THAN ONE CATEGORY.

- ❖ denotes direct City contributions of land or funding
- units in housing agreements

Note: There is some overlap between subsidized rentals, rentals on City-owned land and rental housing grants i.e. a few units may be repeated in these categories.

SAMPLE OF STARTER HOME BUYERS

Single woman working in construction. Income \$35-45K.

A retired man with health issues living on a small fixed income, income \$10,000/year.

Another single man living on a small income, income \$25,000/ year

A young couple with household income about \$40,000/year

A single female with income of \$15,000/year

A 2 parent young family with 2 children. One parent has a disability. Household income between \$30,000 to \$40,000.

Single woman and fiancé. Joint income just under \$60K.

Elderly (still working) lady. Income between \$50-60K.

Semi-retired low income woman, currently living in a rental property.

Working middle-aged woman. Looking forward to home ownership, currently renting.