

# CITY OF KELOWNA

## BYLAW NO. 8625

### **Housing Agreement Authorization Bylaw – Yellow Rose Ventures Ltd. - Benvoulin Road**

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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 Yellow Rose Ventures Ltd. for the lands known as Lot 3 D.L. 128 ODYD Plan 8771 Except Plan KAP61007 located at Benvoulin 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 11<sup>th</sup> day of June, 2001.

Adopted by the Municipal Council of the City of Kelowna this

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Mayor

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City Clerk

**SCHEDULE A - BYLAW NO. 8625**

**PART 2 - TERMS OF INSTRUMENT**

**SECTION 219 COVENANT**

THIS AGREEMENT dated for reference March 22, 2001, is

**BETWEEN:**

YELLOW ROSE VENTURES LTD  
431 Okaview Road  
Kelowna, B.C. V1Y 7R3

("Owner")

**AND:**

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

("City")

**GIVEN THAT:**

- A. Section 219 of the *Land Title Act* permits the registration of a covenant of a negative or positive nature in favour of the City in respect of the use of land or construction on land;
- B. The Owner and the City wish to enter into this Agreement to provide for affordable rental 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 *Municipal Act*;

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

**ARTICLE 1  
INTERPRETATION**

**1.1 Definitions –**

- (a) "Appraiser" means an individual who is either:
  - (i) a member in good standing of the Appraisal Institute of Canada with the designation AAIC; or
  - (ii) a graduate of the Real Estate Institute of British Columbia in real estate appraisal, has the designation RIBC (Appraisal), and is in good standing in that respect;
- (b) "City" means the City of Kelowna;

- (c) "CPI" means the All-Items Consumer Price Index published by Statistics Canada, or its successor in function, for Kelowna (or, where no such index is published for Kelowna, for Vancouver), where 2000 = 100;
- (d) "Dwelling Unit" means one or more rooms that are designed, occupied or intended for occupancy as a separate living space (with cooking, sleeping and sanitary facilities located within that space) for the exclusive residential use of a single domestic unit;
- (e) "Land" means the land described in Item 2 of the Form C to which this Agreement is attached;
- (f) "LTO" means the Kamloops Land Title Office or its successor;
- (g) "Market Rent" means, as determined by an Appraiser acceptable to the City in accordance with this Agreement, the rent that a willing Tenant would pay to a willing landlord to rent the Rental Unit in question, pursuant to a Tenancy Agreement, in the open market in Kelowna, with the market rent for that Rental Unit being determined having regard to the consideration that such a willing Tenant would pay, as part of the rent, for use of any limited common property available exclusively to the Rental Unit in question, for sanitary sewer, storm sewer and water utilities for or in respect of that Rental Unit, and for any fees or charges for cablevision, telephone or other telecommunications, gas utilities or electrical utility services provided to that Rental Unit;
- (h) "Owner" means the registered owner of the Land; and
- (i) "Rental Unit" means a Dwelling Unit that is available for rental at less than market rental rates in accordance with article 2;
- (j) "Tenancy Agreement" means a tenancy agreement as defined in, and subject to, the *Residential Tenancy Act*;
- (k) "Tenant" means an individual who resides in a Rental Unit pursuant to a Tenancy Agreement;
- (l) "Zoning Bylaw" means *City of Kelowna Bylaw No. 8000*.

**1.2 Interpretation** - In this Agreement:

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

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

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

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

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

**2.1** The Owner agrees with the City that:

- (a) the Land must be used only in accordance with this Agreement; and
- (b) the Land must be used only for the construction, use and occupation multiple family residential use. Further, at least 10 units shall be made available as Rental Units as defined by this agreement.

**2.2 Use and Occupancy For Rental** - The Owner agrees with the City as follows:

- (a) a Rental Unit may only be used and occupied as a Dwelling Unit by at least one Tenant pursuant to a Tenancy Agreement;
- (b) the rent payable for a Rental Unit must not exceed the amount determined by reducing the Market Rent for that Rental Unit, determined in accordance with subsection (c), by 10%;
- (c) not more than 90 days before the date of the first Tenancy Agreement in respect of a Rental Unit, the Owner may cause the Market Rent to be determined in respect of a Rental Unit by an Appraiser acceptable to the City, the costs of which appraisals are to be borne by the Owner. Market Rent may thereafter be determined in accordance with the regulations of the Residential Tenancy Act without a further appraisal. Market Rent shall be confirmed by an Appraiser at the specific request of the City.
- (d) the rent for a Rental Unit may be adjusted not more than once annually during any given tenancy, beginning with the day on which the Rental Unit was first rented under a Tenancy Agreement, and after that on each successive anniversary date of a given tenancy, by adjusting the rent up or down, as the case may be, commensurate with the increase or decrease in the Market Rent, as determined under subsection (c), and subject to the adjustment provided for in subsection (b);
- (e) the Owner agrees that since the determination of the Market Rent for a Rental Unit includes consideration, fees or charges for use of limited common property, utilities and other utility services, as contemplated by the definition of Market Rent in this Agreement, no further consideration, charges or fees may be levied or collected by or on behalf of the Owner as part of the rent for a Rental Unit under this section for use of limited common property, sanitary sewer, storm sewer or water utilities for or in respect of the Rental Unit or any fees or charges for cablevision, telephone or other telecommunications, gas utility or electrical utility services provided to the Rental Unit;
- (f) the Owner must ensure that:
  - (i) the aggregate annual income from all sources of all of the individuals who occupy a Rental Unit must not exceed five times the aggregate annual rent permitted for that Rental Unit under this section; and
- (g) the City agrees that if the aggregate annual income of the Tenants of a Rental Unit decreases, the Owner is not obliged to decrease the rent for that Rental Unit;
- (h) the Owner must cause notification of this Agreement to be disclosed for each Tenancy Agreement for each Rental Unit. The Tenancy Agreement must also:
  - (i) contain the agreement of the Tenant that the Rental Unit is subject to the applicable terms of this Agreement;
  - (ii) contain a provision that the Rental Unit must only be occupied by individuals named in the Tenancy Agreement; and
  - (iii) contain a provision that the Owner may not consent to subletting or assignment of the Tenant's rights and obligations under the Tenancy Agreement;
- (i) the City may, in its sole discretion, on the request of the Owner, agree to permit from time to time any increase in the rent for a Rental Unit other than as permitted under this section on such terms and conditions and in such amounts as the City considers desirable.

- (j) **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, as applicable, 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.
  
- (k) **Damages and Rent Charge** - The Owner agrees with the City as follows:
  - (i) for each day a Rental 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 Rental Unit in breach of this Agreement and the Owner has not cured that breach before expiry of that 60 days;
  
  - (ii) the amount under subsection (a) is increased on January 1 of each year by the amount calculated by multiplying that amount as of the previous January 1 by the percentage increase in the CPI between that previous January 1 and the December 31 following; and
  
  - (ii) the Owner hereby grants to the City a rent charge under s. 219 of the *Land Title Act* and at common law, securing payment by the Owner to the City of the amounts described in subsection (a), but the City agrees that enforcement of the rent charge granted by this section is suspended until the date that is 30 days after the date on which any amount due under subsection (a) is due and payable to the City in accordance with subsection (a) and the City may enforce the rent charge granted by this section by an action for an order for sale or by proceedings for the appointment of a receiver.

**ARTICLE 3  
GENERAL**

- 3.1 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 *Municipal Act*,
  - (b) the City is required 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.
- 3.2 No Effect On Laws or Powers** - This Agreement does not
- (a) affect or limit the discretion, rights, duties or powers of the City under any enactment or at common law, including in relation to the use or subdivision of land,
  - (b) impose on the City any legal duty or obligation, including any duty of care or contractual or other legal duty or obligation, to enforce this Agreement,
  - (c) affect or limit any enactment relating to the use or subdivision of land, or
  - (d) relieve the Owner from complying with any enactment, including in relation to the use or subdivision of land.
- 3.3 Notice** - Any notice which may be or is required to be given under this Agreement must be in writing and either be delivered or sent by facsimile transmission. Any notice which is delivered is to be considered to have been given on the first day after it is dispatched for delivery. Any notice which is sent by fax transmission is to be considered to have been given on the first business day after it is sent. If a party changes its address or facsimile number, or both, it must promptly give notice of its new address or facsimile number, or both, to the other party as provided in this section.
- 3.4 Covenant Runs With the Land** - Every obligation and covenant of the Owner in this Agreement constitutes both a contractual obligation and a covenant granted by the Owner to the City in accordance with section 219 of the *Land Title Act* in respect of the Land and this Agreement burdens the Land and runs with it and binds the Owner's successors in title and binds every parcel into which it is consolidated or subdivided by any means, including by subdivision or by strata plan under the *Condominium Act*
- 3.5 Limitation on Owner's Obligations** - The Owner is only liable for breaches of this Agreement that occur while the Owner is the registered owner of the Land.
- 3.6 Waiver** - An alleged waiver of any breach of this Agreement is effective only if it is an express waiver in writing of the breach. A waiver of a breach of this Agreement does not operate as a waiver of any other breach of this Agreement.
- 3.7 Further Acts** - The Owner shall do everything reasonably necessary to give effect to the intent of this Agreement, including execution of further instruments.

- 3.8 Severance** - If any part of this Agreement is held to be invalid, illegal or unenforceable by a court having the jurisdiction to do so, that part is to be considered to have been severed from the rest of this Agreement and the rest of this Agreement remains in force unaffected by that holding or by the severance of that part.
- 3.9 No Other Agreements** - This Agreement is the entire agreement between the parties regarding its subject and it terminates and supersedes all other agreements and arrangements regarding its subject.
- 3.10 Amendment** - This Agreement may be discharged, amended or affected only by an instrument duly executed by both the Owner and the City.
- 3.11 Priority** - The Owner agrees to do everything necessary at the Owner's expense to ensure that this Agreement, and each subsequent section 219 covenant contemplated by section 2 are registered against title to the Land with priority over all financial charges, liens and encumbrances registered or pending at the time of application for registration of these agreements.
- 3.12 Enurement** - This Agreement binds the parties to it and their respective successors, heirs, executors and administrators. Reference in this Agreement to the "City" is a reference also to the elected and appointed officials, employees and agents of the City.
- 3.13 Deed and Contract** - By executing and delivering this Agreement each of the parties intends to create both a contract and a deed executed and delivered under seal.

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







**GRANT OF PRIORITY**

GIVEN THAT:

A. The Owner (as defined in the s. 219 covenant 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 ("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 \$2.00 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.

END OF DOCUMENT