

Land Title Act  
55 Form C (Section 233)  
LB005034

12 JAN 2007 14 55

LB005033

10

Province of British Columbia

**GENERAL INSTRUMENT - PART 1**

(This area for Land Title Office use)

Page 1 of 9 pages

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

Porter Ramsay, Lawyers  
#200 - 1465 Ellis Street, Kelowna BC V1Y 2A3  
Helve Raun (250) 763-7646 File No. 63418-1-44  
LTO Client No. 10563 (Highpointe)

  
Signature of Applicant's Solicitor or Agent

2. PARCEL IDENTIFIER(S) AND LEGAL DESCRIPTION(S) OF LAND:\*

(PID) (LEGAL DESCRIPTION)  
004-749-880 Lot 51, Section 30, Township 26, ODYD, Plan 27662

3. NATURE OF INTEREST:\*

DESCRIPTION DOCUMENT REFERENCE PERSON ENTITLED TO INTEREST  
See Schedule See Schedule See Schedule

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

- (a) Filed Standard Charge Terms  D.F. No.
- (b) Express Charge Terms  Annexed as Part 2
- (c) Release  There is no Part 2 of this instrument

01 07/01/12 15:00:43 01 KL 973112  
CHARGE \$130.40

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):\* **WESLAN DEVELOPMENTS INC.** (Inc. #BC0675449) and **R 127 ENTERPRISES LTD.** (Inc. # BC0384163) as to Sec. 219 Covenant and **ROYAL BANK OF CANADA** as to Priority Agreement


6. TRANSFEREE(S): (including postal address(es) and postal code(s))\*

**CITY OF KELOWNA**, 1435 Water Street, Kelowna, BC V1Y 2J4

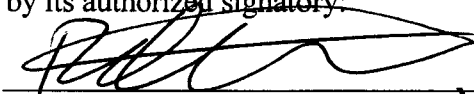
7. ADDITIONAL OR MODIFIED TERMS:\* N/A

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.

SUBMITTED BY  
KERSHAW KUROYAMA

  
Officer Signature(s)  
**TOM SMITHWICK, Q.C.**  
Porter Ramsay  
BARRISTERS and SOLICITORS  
#200 - 1465 Ellis Street  
Kelowna, BC V1Y 2A3  
Phone: 763-7646

Execution Date		
Y	M	D
06	07	27

Party(ies) Signature(s)  
WESLAN DEVELOPMENTS INC.  
by its authorized signatory:  
  
Print Name: Ray Lanthier

Officer Certification:  
Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the Evidence Act, R.S.B.C. 1996, c. 124, to take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the Land Title Act as they pertain to the execution of this instrument. \* If space insufficient, enter "SEE SCHEDULE" and attach schedule in Form E. \*\* If space insufficient, continue executions on addition page(s) in Form D.

(Covenant - Wildfire)

LAND TITLE ACT  
**FORM D**  
EXECUTIONS CONTINUED

Officer's Signature(s)

Execution Date

Transferor(s) Signature(s)

  
**TOM SMITHWICK, Q.C.**  
PORTER RAMSAY  
BARRISTERS and SOLICITORS  
#200 - 1465 Ellis Street  
Kelowna, BC V1Y 2A3  
Phone: 763-7648

Y	M	D
06	07	24
06	07	31
06	11	01

**RIZ ENTERPRISES LTD.**  
by its authorized signatory(ies)

  
Print Name: **GEBY WAGER**

**ROYAL BANK OF CANADA**  
by its authorized signatory(ies):

  
Print Name:

**Roger Sangerloo**  
Sr. Account Manager

  
Print Name:

**Cathy Wong**  
Account Manager

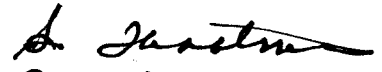
As to priority over Mortgage No.  
KX100112 and Assignment of Rents  
KX100113


Transferee(s) Signature(s)

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

  
**SHARON SHEPHERD, MAYOR**

  
Print Name:  
**STEPHEN FLEMING, DEPUTY CITY CLERK**

  
**Susan Jean Tanatmis**  
A Commissioner for Taking Affidavits for  
British Columbia  
36th Floor, 1055 West Georgia Street  
Vancouver, B.C., V6E 3S5  
(as to both signatures)

  
**POLLY PALMER**  
A COMMISSIONER FOR TAKING  
AFFIDAVITS OF BRITISH COLUMBIA  
1435 WATER STREET, KELOWNA, B.C.

**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.

*LAND TITLE ACT***FORM E  
SCHEDULE**

Page 3 of 10 Pages

ENTER THE REQUIRED INFORMATION IN THE SAME ORDER AS THE INFORMATION MUST APPEAR ON THE FREEDHOLD TRANSFER FORM, MORTGAGE FORM OR GENERAL INSTRUMENT FORM.

3.	NATURE OF INTEREST: DESCRIPTION	DOCUMENT REFERENCE	PERSON ENTITLED TO INTEREST
	Section 219 Covenant	Pages 4 to 9	Transferee
	Priority Agreement as to Section 219 Covenant numbered one less than this document over Mortgage KX100112 and Assignment of Rents KX100113	Page 10	Transferee

**PART 2 - TERMS OF AGREEMENT: SECTION 219 COVENANT**

THIS INDENTURE made this 27<sup>th</sup> day of July, 2006

BETWEEN:

**WESLAN DEVELOPMENTS INC. (Inc. No. BC0675449)**  
of 11<sup>TH</sup> Floor, 938 Howe Street  
Vancouver, BC V6Z 1N9

OF THE FIRST PART

and

**R 127 ENTERPRISES LTD. (Inc. No. BC0384163)**  
of #14 – 1020 Lanfranco Road  
Kelowna, BC V1W 3W6

OF THE SECOND PART

(jointly as the "Transferor")

AND:

**CITY OF KELOWNA**  
1435 Water Street  
Kelowna, BC V1Y 2J4

(hereinafter referred to as the "Transferee")

OF THE THIRD PART

WHEREAS:

A. The Transferor is the registered owner of those lands and premises in the City of Kelowna, in the Province of British Columbia, legally described as:

Lot 51  
Section 30, Township 26  
Osoyoos Division Yale District  
Plan 27662

✓

(hereinafter referred to as the "Lands")

B. Section 219 of the *Land Title Act*, provides that a covenant, in favour of the Transferee whether of a negative or positive nature, in respect of the use of the Lands, may be registered as a charge against the title to the Lands subject to the covenant, and is enforceable

against the Transferor and their successors in title even if the covenant is not annexed to land owned by the Transferee;

C. A Forest Health and Wildfire Hazard Assessment Report in connection with the Lands has been completed at the request of the Transferee by David Gill RPF dated January 31, 2005 (hereinafter referred to as the "Assessment") designating the Lands as having a Low to Moderate Hazard Rating;

D. The parties have agreed that based upon the Assessment this Covenant should be registered against title to the Lands pursuant to Section 219 of the *Land Title Act*.

NOW THEREFORE in consideration of the promises set forth in this Covenant and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. The Transferor shall, when housing construction commences on the Lands herein comply with the recommendations as follows:

Mitigation works in Zone 1, will be minimal and directed at individual trees. Treatments will consist of :

- (a) where required, removing lower branches by pruning to a height of 3 meters above the ground;
- (b) removing trees that are exhibiting signs of poor health or structural weakness;
- (c) though trees in this zone are relatively windfirm, (trees are scattered and have developed in the presence of wind and therefore are accustomed to the effects of wind) trees will continue to blow over from time to time especially if the ground is saturated during a strong wind event or root rot develops. Though not required to reduce the potential fire hazard, crown thinning is a worthwhile option to consider for reducing the sail area of a tree's crown. Crown thinning will improve a tree's resilience to wind, thereby reducing its risk to residences; and,
- (d) on a case-by-case basis, establishing an inter-tree spacing of 2-4 meters, removing individual mature trees deemed to be too close together.

Mitigation Works in Zone 2 will consist of removing ladder fuels and trees in poor health and will consist of:

- (a) removing all Douglas-Fir stems 10 – 15 cm in diameter (at breast height) unless stems are greater than 2 – 4 meters apart;
- (b) removing all trees that exhibit signs of poor health (predominantly co-dominant and suppressed Douglas-Fir);
- (c) removing all dead and dying standing trees;
- (d) establishing an inter-tree spacing of 2 – 4 meters;
- (e) removing all clumps of immature coniferous trees (saplings less than 8 meters tall);
- (f) pruning the remaining trees to a height of 3 meters;
- (g) consideration of thinning the crowns of specific residual trees; and
- (h) removing the slash resulting from treatment by burning, or chipping and scattering.

Mitigation works in Zone 3 will focus on density reduction and will consist of:

- (a) removing all stems 11 – 15 cm in diameter (at breast height)
- (b) removing all dead and dying standing trees (predominantly co-dominant suppressed Douglas-Fir);
- (c) establishing an inter-tree spacing of 2 – 4 meters;
- (d) removing all clumps of immature coniferous trees (saplings less than 8 meters tall);
- (e) pruning the remaining trees to a height of 3 meters;
- (f) consideration of thinning the crowns of specific residual trees; and,
- (g) removing the slash resulting from treatment by burning, or chipping and scattering.

In all zones, existing coarse and fine woody debris (with exception of the debris piles from previous clearing) may remain on site but should be dealt with on a case by case basis; and in addition:

- a) ensure that all dead trees are felled and disposed of by burning them in accordance with specific regulations regarding burning for the area or removing them from the site, and the Transferor shall continue to keep the Lands free of accumulation of any dead trees;
- b) select the flattest location on the lands for the building site, and will ensure that no buildings are built in gullies or draws that accumulate fuel and funnel winds which worsen fire behavior;
- c) fall and dispose of all trees, limbs and shrubs that are overhanging roofs or growing under eaves of buildings and maintain same;
- d) establish a defensive space of 15 metres around all buildings on the Lands by:
  - (i) keeping and maintaining a spacing of all coniferous trees on the lands so that the stems are at least 3 metres apart and maintaining pruning of all remaining trees on the lands to a height of 2.5 metres leaving three whorls of live branches on smaller trees;
  - (ii) remove and dispose of all needles and dead twigs and branches and keep and maintain the lands free of accumulation of any such items;
  - (iii) planting or leaving only acceptable vegetation within the defensive space, such acceptable vegetation being watered and mowed lawns, shrubs under 3 metres in height, deciduous trees and pruned coniferous trees spaced as set out in (d)(i) hereof;
- e) clean up and dispose of all combustible material remaining from construction as soon as construction is complete.

2. The Transferor agrees to ensure that all authorities having jurisdiction have unrestricted access to the Lands for the purposes of fire fighting, suppression, control and prevention.

3. The Transferor agrees to provide a copy of the Assessment to any interested persons upon request and does hereby authorize and direct the Transferee to provide a copy of the Assessment to interested parties upon request.

4. The Transferor does hereby, on behalf of the Transferor and the Transferor's heirs, executors, administrators, successors and assigns, remise, release, indemnify and save harmless the Transferee, its officers, officials, employees or agents from any and all claims, causes of action, loss or suits of whatever nature or kind including, without limitation, claims for property damage, personal injury or death arising out of or in any way connected with the fire

hazard existing on the Lands. The Transferor does further agree that the Transferee shall have no obligation to ensure compliance with or enforce the terms of this Covenant or to do any act or thing in connection with the fire hazard or this Covenant, which at all times shall remain the responsibility of the Transferor and the Transferor's heirs, executors, administrators, successors, assigns and successors in title.

5. Pursuant to Section 219 of the *Land Title Act*, the covenants herein contained shall be covenants running with the Lands and shall enure to the benefit of and be binding upon the Transferor and the Transferor's heirs, executors, administrators, successors, assigns and successors in title.

6. In this Covenant unless the context otherwise requires, the singular includes the plural and vice versa.

7. This Covenant will be interpreted according to the laws of the Province of British Columbia.

8. If any part of this Covenant is found to be illegal or unenforceable, that part will be considered separate and severable and the remaining parts will not be affected thereby and will be enforceable to the fullest extent permitted by law.

9. Nothing contained or implied in this Covenant shall prejudice or affect the exercise of any of the Transferee's functions under any source of authority including, without limitation, any statutes, regulations, bylaws, orders or other constating documents, all of which may be fully and effectively exercised by the Transferee.


10. The Transferor will do or cause to be done all things and execute or cause to be executed all documents and give such further and other assurances which may be reasonably necessary to give proper effect to the intent of this Covenant.

11. This Covenant will not be modified or discharged except in accordance with the provisions of Section 219(9) of the *Land Title Act*.



Page 9 of <sup>10</sup> 9 pages

This is the instrument creating the condition or covenant entered into under Section 219 of the *Land Title Act* by the registered owners referred to herein.

  
Approving Officer *Nov 8/06*

### CONSENT AND PRIORITY AGREEMENT

GIVEN THAT Royal Bank of Canada (the "Chargeholder") is the holder of a mortgage and assignment of rents registered against the land referred to in the Section 219 Covenant (the "Agreement") to which this Consent and Priority Agreement is attached, which mortgage and assignment of rents are registered in the Kamloops Land Title Office under instrument numbers KX100112 and KX100113 (the "Charge").

This Consent and Priority Agreement is evidence that in consideration of payment to it of ONE DOLLAR (\$1.00) by the transferee described in item 6 of Part 1 of the Form C to which this Consent and Priority Agreement is attached (the "Transferee"), the Chargeholder agrees with the Transferee as follows:

The Chargeholder consents to the granting and registration of the Agreement and the Chargeholder agrees that the Agreement binds its interest in and to the Lands.

The Chargeholder grants to the Transferee priority for the Agreement over the Chargeholder's right, title and interest in and to the Lands and the Chargeholder postpones the Charge and all of its right, title and interest thereunder to the Agreement as if the Agreement had been executed, delivered and registered prior to the execution, delivery and registration of the Charge.

As evidence of its agreement with the Transferee to be bound by this Consent and Priority Agreement, as a contract and as a deed executed and delivered under seal, the Chargeholder has executed and delivered this Consent and Priority Agreement by executing Part 1 of the *Land Title Act* Form C to which this Consent and Priority Agreement is attached and which forms part of this Consent and Priority Agreement.

END OF DOCUMENT

17/31  
Land Title Act  
2007 Form 57  
(Section 233)

LB005113

12 JAN 2007 14 57

LB005112

2730.40  
E  
PA

Province of British Columbia

**GENERAL INSTRUMENT - PART 1**

(This area for Land Title Office use)

Page 1 of 8 pages

SUBMITTED BY  
KERSHAW KUROYAMA

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

Porter Ramsay, Lawyers  
#200 - 1465 Ellis Street, Kelowna BC V1Y 2A3  
Helve Raun (250) 763-7646 File No. 63418-1-44  
LTO Client No. 10563 (Highpointe)

  
Signature of Applicant's Solicitor or Agent

2. PARCEL IDENTIFIER(S) AND LEGAL DESCRIPTION(S) OF LAND:\*

(PID) (LEGAL DESCRIPTION)  
See Schedule See Schedule

3. NATURE OF INTEREST:\*

DESCRIPTION DOCUMENT REFERENCE PERSON ENTITLED TO INTEREST  
(page and paragraph)  
See Schedule See Schedule See Schedule

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

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

<input type="checkbox"/>	D.F. No.
<input checked="" type="checkbox"/>	Annexed as Part 2
<input type="checkbox"/>	There is no Part 2 of this instrument

01 07/01/12 15:03:16 01 KL 973112  
CHARGE \$130.40

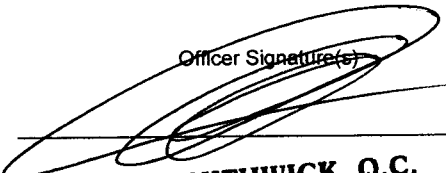
A selection of (a) includes any additional or modified terms referred to in item 7 or in a schedule annexed to this instrument. If (c) is selected, the charge described in item 3 is released or discharged as a charge on the land described in item 2.

5. TRANSFEROR(S):\* **WESLAN DEVELOPMENTS INC. (Inc. #BC0675449) and R 127 ENTERPRISES LTD. (Inc. # BC0384163) as to Easement and ROYAL BANK OF CANADA as to Priority Agreement**

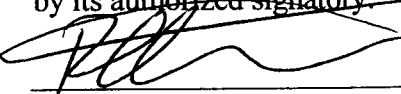
6. TRANSFEREE(S): (including postal address(es) and postal code(s))\* **11th.Fl., 938 Howe St., Vancouver, BC THE REGISTERED OWNERS of Strata Lots 1 to 63. Strata Plan KAS003162 V6Z 1N9**

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)  
**TOM SMITHWICK, Q.C.**  
Porter Ramsay  
BARRISTERS and SOLICITORS  
#200 - 1465 Ellis Street  
Kelowna, BC V1Y 2A3  
Phone: 763-7646

Execution Date		
Y	M	D
06	07	27

Party(ies) Signature(s)  
WESLAN DEVELOPMENTS INC.  
by its authorized signatory:  
  
Print Name: Ran Lanthier

Officer Certification:

Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the Evidence Act, R.S.B.C. 1996, c. 124, to take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the Land Title Act as they pertain to the execution of this instrument. \* If space insufficient, enter "SEE SCHEDULE" and attach schedule in Form E. \*\* If space insufficient, continue executions on addition page(s) in Form D.


(Easement - Blanket, All Lots)

**LAND TITLE ACT**  
**FORM D**  
**EXECUTIONS CONTINUED**

Officer's Signature(s)

Execution Date

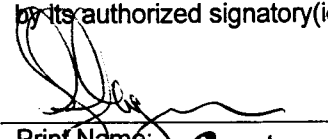
Transferor(s) Signature(s)




**TOM SMITHWICK, Q.C.**  
PORTER RAMSAY  
BARRISTERS and SOLICITORS  
#200 - 1465 Ellis Street  
Kelowna, BC V1Y 2A3  
Phone: 763-7646

Y	M	D
06	07	24
06	07	31
06	07	27

**R 127 ENTERPRISES LTD.**  
by its authorized signatory(ies)




Print Name: Gaby Wager




**Susan Jean Tanatmis**  
A Commissioner for Taking Affidavits for  
British Columbia  
36th Floor, 1055 West Georgia Street  
(as to both signatures)  
Vancouver, B.C., V6E 3S5


**ROYAL BANK OF CANADA**  
by its authorized signatory(ies)



Print Name: Roger Sangerloo  
Sr. Account Manager



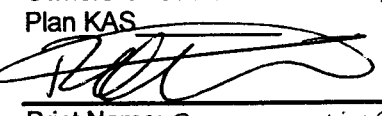
**TOM SMITHWICK, Q.C.**  
Porter Ramsay  
BARRISTERS and SOLICITORS  
#200 - 1465 Ellis Street  
Kelowna, BC V1Y 2A3  
Phone: 763-7646



Print Name: Cathy Wong  
Account Manager

As to priority over Mortgage No.  
KX100112 and Assignment of Rents  
KX100113

Authorized signatory of the Registered  
Owners of Strata Lots 1 to 63, Strata  
Plan KAS



Print Name: RON LANTHIER

**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.

*LAND TITLE ACT*  
**FORM E**  
**SCHEDULE**

ENTER THE REQUIRED INFORMATION IN THE SAME ORDER AS THE INFORMATION MUST APPEAR ON THE FREEDHOLD TRANSFER FORM, MORTGAGE FORM OR GENERAL INSTRUMENT FORM.

2. Parcel Identifier(s) and Legal Description(s) of Land

No PID s

Strata Lots 1 – 63 inclusive  
 Section 30, Township 26, ODYD,  
 Strata Plan KAS **003162**

3. NATURE OF INTEREST:  
 DESCRIPTION

DOCUMENT  
 REFERENCE

PERSON ENTITLED  
 TO INTEREST

Easement

Pages 4 to 7

Registered Owner of the  
 Common Property Strata  
 Plan KAS **003162**

Priority Agreement as to Section  
 219 Covenant numbered one less  
 than this document over Mortgage  
 KX100112 and Assignment of  
 Rents KX100113

Page 8

Transferee

**TERMS OF INSTRUMENT - PART 2**

THIS agreement made this \_\_\_\_\_ day of July, 2006.

BETWEEN:

**WESLAN DEVELOPMENTS INC. (Inc. No. BC0675449)**  
of 11<sup>TH</sup> Floor, 938 Howe Street  
Vancouver, BC V6Z 1N9

And

**R 127 ENTERPRISES LTD. (Inc. No. BC0384163)**  
of #14 – 1020 Lanfranco Road  
Kelowna, BC V1W 3W6

(hereinafter jointly referred to as the "Grantor")

OF THE FIRST PART

AND:

**THE REGISTERED OWNERS OF STRATA LOTS 1 TO 63,  
STRATA PLAN KAS 003162**

(hereinafter referred to as the "Grantee")

OF THE SECOND PART

WHEREAS:

A. Grantor is the individual registered owners in fee simple of land in the City of Kelowna, in the Province of British Columbia, more particularly known and described as:

Strata Lot 1 – 63 inclusive, Section 30, Township 26, ODYD, Strata Plan KAS 003162  
(hereinafter referred to as the "Land")

B. Grantee is the owners of Common Property Strata Plan KAS 003162  
(hereinafter referred to As the "Grantee's Land")

AND WHEREAS THE Grantor has agreed to grant to the Grantee an easement over the Grantor's Land for the purposes of providing access to and the right of passage to maintain and repair all retaining walls, engineered slopes, fills and all fencing put in place by the developer, as at the time of the registration of the Strata Plan located on the Grantor's Land (hereinafter referred to as the "Works");

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the sum of One Dollar (\$1.00) of lawful money of Canada, now paid to the Grantor (the receipt of which is hereby acknowledged by the Grantor) and in consideration of the mutual covenants and conditions hereinafter set forth, THE GRANTOR DOES HEREBY GRANT AND CONVEY unto the Grantee, their heirs, executors, successors and assigns, an easement over the Grantor's Land as may reasonably be necessary in order to get access to the retaining walls engineered slopes, fills and all fencing (hereinafter referred to as the "Easement Area"), that is to say, the right, license, liberty, privilege, right-of-way and easement in, over and upon such part of the Easement Area as may be reasonably necessary for the laying down, construction operation, maintenance, inspection and removal, replacement, reconstruction and repair of the Works together with all structures and other equipment and appurtenances as may be necessary or convenient in connection therewith and together with the right of ingress, egress and regress over the Easement Area for the benefit of the Grantee's Land, its servants, agents, contractors with vehicles, supplies and equipment and for all purposes useful or convenient in connection with or incidental to the exercise and enjoyment of the said rights and privileges herein granted.

IT IS MUTUALLY COVENANTED AND AGREED by and between the Grantor and the Grantee as follows:

1. The Grantor covenants and agrees with the Grantee that the Grantee will have reasonable access across the Easement Area so as to maintain, repair, replace and or inspect the Works.
  
2. The Grantor covenants and agrees with the Grantee that the Grantor will not construct or maintain any embankment, fill or any building or any structure of any kind whatsoever which shall occupy any portion of the Easement Area (except the structures that are allowed in the Building Envelope Areas as outlined in a covenant registered against the said Land) including the sub-soil thereof, other than a boundary fence and other than as may be necessary for a roadway crossing the Easement Area which does not interfere with the present or future utilization of the rights herein granted. The owner of any individual lot may not alter, repair, paint or amend any structures put in place by the developer.

3. The Grantor covenants with the Grantee that the Grantor shall have the right to cultivate or otherwise use the Grantor's Land and the right to compensation for any damage done by the Grantee to the landscaping thereon.

4. The Grantee will cause any such Works and ancillary equipment to be maintained, replaced or repaired in a firm, substantial, proper and workmanlike manner, so as to do as little injury as reasonably possible to the Easement Area and will fill up all holes caused by such work and restore the surface of the ground as far as may be reasonably possible and will bear all costs of such maintenance, replacement or repair.

5. Notwithstanding any rule of law or equity, any and all chattels hereinafter installed by the Grantee and/or the Grantor on the Easement Area shall be and shall remain chattels and shall at all times remain the property of the Grantee and the Grantor notwithstanding that the same be annexed or affixed to the freehold and shall at any time and from time to time be removable in whole or in part by the Grantee.

6. The rights herein granted shall include the right to maintain, operate, remove and replace valves, fittings and any other ancillary equipment that may be necessary for the operation and maintenance of the Works and shall carry with it the privilege and right to inspect and keep free from brush, trees, growth and other obstructions and for all such purposes to have access to and to enter upon the Easement Area, SUBJECT ALWAYS to the exercise of such privileges and rights in a good and workmanlike and reasonable manner so as to interfere as little as possible with the use of the Easement Area for other purposes.

7. The rights herein granted shall not in any way interfere with the full enjoyment of the Easement Area by the owner thereof or those claiming through or under him, save as aforesaid and as may be necessary for the purposes herein expressed.

8. Should any difficulties or disputes arise at any time between the parties hereto as to the construction of this agreement or in reference to any matter arising out of this agreement or in purported compliance therewith, such difference or dispute shall be referred to the arbitration of three arbitrators, one to be appointed by the Grantor, one to be appointed by the Grantee and these two to select a third, and the award of the said arbitrators or any two of them shall be conclusive between the parties hereto and the arbitration shall in all respects be



governed by the *Arbitration Act* of British Columbia. PROVIDED ALWAYS that any person or company desiring an arbitration shall first deposit the sum of Five Hundred (\$500.00) Dollars in any chartered bank in Kelowna, British Columbia, to the joint credit of the Grantor and the Grantee to be used to defray the cost of such arbitration, provided the same shall be awarded against such company or person desiring the arbitration.

9. The rights, liberties and easement hereby granted are and shall be of the same force and effect to all intents and purposes as a covenant running with the land and this agreement, including all the covenants and conditions herein contained, shall extend to and be binding upon and enure to the benefit of the heirs, executors, successors and assigns of the parties hereto respectively and whenever the singular or masculine is used, it shall be construed as if the plural or feminine or the neuter, as the case may be, had been used where the context so requires and the rest of the sentence shall be construed as if the grammatical and terminological change thereby rendered necessary had been made.

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

11. This Agreement is not to be amended or discharged without the consent of the City of Kelowna.

## CONSENT AND PRIORITY AGREEMENT

GIVEN THAT Royal Bank of Canada (the "Chargeholder") is the holder of a mortgage and assignment of rents registered against the land referred to in the Easement (the "Agreement") to which this Consent and Priority Agreement is attached, which mortgage and assignment of rents are registered in the Kamloops Land Title Office under instrument numbers KX100112 and KX100113 (the "Charge").

This Consent and Priority Agreement is evidence that in consideration of payment to it of ONE DOLLAR (\$1.00) by the transferee described in item 6 of Part 1 of the Form C to which this Consent and Priority Agreement is attached (the "Transferee"), the Chargeholder agrees with the Transferee as follows:

The Chargeholder consents to the granting and registration of the Agreement and the Chargeholder agrees that the Agreement binds its interest in and to the Lands.

The Chargeholder grants to the Transferee priority for the Agreement over the Chargeholder's right, title and interest in and to the Lands and the Chargeholder postpones the Charge and all of its right, title and interest thereunder to the Agreement as if the Agreement had been executed, delivered and registered prior to the execution, delivery and registration of the Charge.

As evidence of its agreement with the Transferee to be bound by this Consent and Priority Agreement, as a contract and as a deed executed and delivered under seal, the Chargeholder has executed and delivered this Consent and Priority Agreement by executing Part 1 of the *Land Title Act* Form C to which this Consent and Priority Agreement is attached and which forms part of this Consent and Priority Agreement.

END OF DOCUMENT

Land Title Act

12 JAN 2007 14 58

LB005116

Form C  
(Section 233)

LB005117

Province of British Columbia

**GENERAL INSTRUMENT - PART 1**

(This area for Land Title Office use)

Page 1 of 8 pages

SUBMITTED BY  
KERSHAW KUROYAMA

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

Porter Ramsay, Lawyers  
#200 - 1465 Ellis Street, Kelowna BC V1Y 2A3  
Helve Raun (250) 763-7646 File No. 63418-1-44  
LTO Client No. 10563 (Highpointe)

  
Signature of Applicant's Solicitor or Agent

PARCEL IDENTIFIER(S) AND LEGAL DESCRIPTION(S) OF LAND:\*

(PID) (LEGAL DESCRIPTION)  
See Schedule See Schedule

3. NATURE OF INTEREST:\*

DESCRIPTION	DOCUMENT REFERENCE (page and paragraph)	PERSON ENTITLED TO INTEREST
See Schedule	See Schedule	See Schedule

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

- (a) Filed Standard Charge Terms  D.F. No.
- (b) Express Charge Terms  Annexed as Part 2
- (c) Release  There is no Part 2 of this instrument

01 07/01/12 15:03:30 01 KL 973112  
CHARGE \$130.40

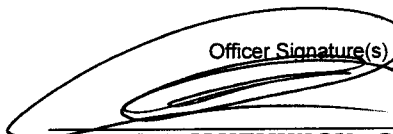
A selection of (a) includes any additional or modified terms referred to in item 7 or in a schedule annexed to this instrument. If (c) is selected, the charge described in item 3 is released or discharged as a charge on the land described in item 2.

5. TRANSFEROR(S):\* **WESLAN DEVELOPMENTS INC.** (Inc. #BC0675449) and **R 127 ENTERPRISES LTD.** (Inc. # BC0384163) as to Sec. 219 Covenant and **ROYAL BANK OF CANADA** as to Priority Agreement

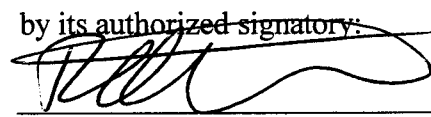
6. TRANSFEREE(S): (including postal address(es) and postal code(s))\*  
CITY OF KELOWNA, 1435 Water Street, Kelowna, BC V1Y 2J4

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)  
**TOM SMITHWICK, Q.C.**  
Porter Ramsay  
BARRISTERS and SOLICITORS  
#200 - 1465 Ellis Street  
Kelowna, BC V1Y 2A3  
Phone: 763-7646

Execution Date		
Y	M	D
06	07	27

Party(ies) Signature(s)  
WESLAN DEVELOPMENTS INC.  
by its authorized signatory:  
  
Print Name: Ron Lenthien

Officer Certification:

Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the Evidence Act, R.S.B.C. 1996, c. 124, to take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the Land Title Act as they pertain to the execution of this instrument. \* If space insufficient, enter "SEE SCHEDULE" and attach schedule in Form E. \*\* If space insufficient, continue executions on addition page(s) in Form D.

(Covenant - No Disturb)

Handwritten notes: 763-881

LAND TITLE ACT  
**FORM D**  
EXECUTIONS CONTINUED

Officer's Signature(s)

Execution Date

Transferor(s) Signature(s)


  
**TOM SMITHWICK, Q.C.**  
PORTER RAMSAY  
BARRISTERS and SOLICITORS  
#200 - 1465 Ellis Street  
Kelowna, BC V1Y 2A3  
Phone: 763-7646

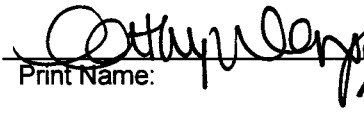
Y	M	D
06	07	24
06	07	31
06	11	27

**R 127 ENTERPRISES LTD.**  
by its authorized signatory(ies)

  
Print Name: **GEBY WAGER**

**ROYAL BANK OF CANADA**  
by its authorized signatory(ies):

  
Print Name: **Roger Sangerlo**  
Sr. Account Manager

  
Print Name: **Cathy Vong**  
Account Manager

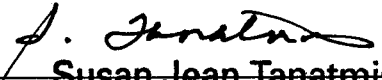
As to priority over Mortgage No. KX100112  
and Assignment of Rents KX100113

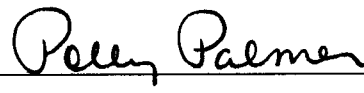
Transferee(s) Signature(s)

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

  
Print Name: **SHARON SHEPHERD, MAYOR**

  
Print Name: **STEPHEN FLEMING, DEPUTY CITY CLERK**

  
**Susan Jean Tanatmis**  
A Commissioner for Taking Affidavits for  
British Columbia  
36th Floor, 1055 West Georgia Street  
(as to both signatories) Kelowna, B.C., V6E 3S5

  
**POLLY PALMER**  
A COMMISSIONER FOR TAKING  
AFFIDAVITS OF BRITISH COLUMBIA  
(as to both signatories) 1435 WATER STREET, KELOWNA, B.C.

**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.

LAND TITLE ACT  
**FORM E**  
**SCHEDULE**

Page 3 of 8 Pages

ENTER THE REQUIRED INFORMATION IN THE SAME ORDER AS THE INFORMATION MUST APPEAR ON THE FREEDHOLD TRANSFER FORM, MORTGAGE FORM OR GENERAL INSTRUMENT FORM.

2. Parcel Identifier(s) and Legal Description(s) of Land

No PID s

Strata Lots 4 to 8, 10 to 11, 14 to 23, 26 to 29, 31 to 34, 40 to 43,  
 48 to 57, and 60 to 62,  
 All in Section 30, Township 26  
 Osoyoos Division Yale District  
 Strata Plan KAS ~~003162~~

3. NATURE OF INTEREST:  
 DESCRIPTION

DOCUMENT  
REFERENCEPERSON ENTITLED  
TO INTEREST

Section 219 Covenant over part  
 shown on Plan KAP ~~82881~~

Pages 4 to 6

Transferee

Priority Agreement as to Section  
 219 Covenant numbered one less  
 than this document over Mortgage  
 KX100112 and Assignment of  
 Rents KX100113

Page 7

Transferee

**PART 2 - TERMS OF AGREEMENT: SECTION 219 COVENANT**

THIS INDENTURE made this 27 day of July, 2006

BETWEEN:

**WESLAN DEVELOPMENTS INC. (Inc. No. BC0675449)**  
of 11<sup>TH</sup> Floor, 938 Howe Street  
Vancouver, BC V6Z 1N9

OF THE FIRST PART

And

**R 127 ENTERPRISES LTD. (Inc. No. BC0384163)**  
of #14 – 1020 Lanfranco Road  
Kelowna, BC V1W 3W6

OF THE SECOND PART

(jointly as the "Transferor")

AND:

**CITY OF KELOWNA**  
1435 Water Street  
Kelowna, BC V1Y 2J4

(The "Transferee")

OF THE THIRD PART

WHEREAS:

A. The Transferor is the registered owner of those lands and premises in the City of Kelowna, in the Province of British Columbia, legally described as:

Strata Lots 4 to 8, 10 to 11, 14 to 23, 26 to 29, 31 to 34, 40 to 43,  
48 to 57, and 60 to 62,  
All in Section 30, Township 26  
Osoyoos Division Yale District  
Strata Plan KAS 003162

(hereinafter referred to as the "Lands")

B. Section 219 of the *Land Title Act* provides that a covenant, in favour of the Transferee, whether of a negative or positive nature, in respect to the use of land or that land is

or is not to be built on in favour of the transferee, may be registered as a charge against the title to that land and is enforceable against the transferors and his successors in title even if the covenant is not annexed to land owned by the transferee.

NOW THEREFORE THIS AGREEMENT WITNESSETH that pursuant to Section 219 of the *Land Title Act*, and in consideration of the sum of ONE DOLLAR (\$1.00) now paid to the Transferors by the Transferee (the receipt and sufficiency whereof is hereby acknowledged), the parties hereto agree and covenant with each other as follows:

1. Hereafter no buildings, structures or improvements of any kind shall be constructed or located on that portion of the Lands outlined in bold black on that reference plan of the Land, pursuant to Section 219 of the *Land Title Act* prepared by Runnalls Denby B.C.L.S. and dated the 14 day of July, 2006 and assigned registration number KAP 82881 (hereinafter referred to as the "Non-Disturbance Zone"), photo-reduced copies of which are attached as Schedule "A".
2. The Transferors further agree that they shall not remove or disturb any soil, rocks, vegetation or trees within the Non-Disturbance Zone without first obtaining the written consent of the Transferee.
3. The Transferors, on behalf of themselves, their heirs, executors, successors and assigns agree to indemnify and save harmless the Transferee, their officers, employees or agents from all loss, damage, costs, action, suits, debts, accounts, claims and demands which the Transferee, their officers, employees or agents may suffer or incur or be put to arising out of or in any way connected with any breach of any covenant or agreement on the part of the Transferors or their heirs, successors, administrators and assigns contained in this Agreement or arising out of or in any way connected with any loss or damage suffered personally or in connection with any building, improvement, chattel or other construction including the contents of any of them, built, constructed or placed on the said Lands. This Covenant shall be binding upon the Transferors as a personal covenant only during the period of the Transferors' ownership of any interest in the Lands.
4. The Transferors do remise, release and forever discharge the Transferee and its officers, employees, servants or agents from all loss, damage, costs, actions, suits, debts,

accounts, claims and demands which the Transferors or their heirs, executors, administrators, successors and assigns may have against the Transferee and its officers, employees, servants or agents from and by reason of any damage suffered personally or in connection with any building, improvement, chattel or other structure, including the contents of them, built, constructed or placed on the Lands which loss or damage is the result of the movement of soil, rocks, vegetation or trees in the Non-Disturbance Zone.

5. This Agreement shall be construed as a covenant running with the Lands. This Agreement is not to be amended or discharged without the consent of the City of Kelowna.

6. The parties agree that nothing contained or implied herein shall in any way prejudice or affect the powers of the Transferee in the exercise of its functions under any statute, bylaw, order or regulation, all of which may be fully exercised in relation to the Lands as if this Agreement had not been executed.

7. This Agreement shall enure to the benefit of and be binding upon the parties hereto, their respective successors and assigns.

8. If any part of this Agreement is found to be illegal or unenforceable, that part will be considered separate and severable from the rest and the remaining parts will not be affected hereby and will be enforceable to the fullest extent permitted by law.

9. It is understood and agreed that, by registration of this Covenant as a charge against title to the Lands, the Transferee assumes no responsibility for enforcement of the terms of this Covenant. It is understood and agreed that at all times the Transferors are responsible for ensuring compliance with this Covenant.

This is the instrument creating the condition or covenant entered into under Section 219 of the *Land Title Act* by the registered owners referred to herein.

  
Approving Officer

Nov. 27, 2006



## CONSENT AND PRIORITY AGREEMENT

GIVEN THAT Royal Bank of Canada (the "Chargeholder") is the holder of a mortgage and assignment of rents registered against the land referred to in the Section 219 Covenant (the "Agreement") to which this Consent and Priority Agreement is attached, which mortgage and assignment of rents are registered in the Kamloops Land Title Office under instrument numbers KX100112 and KX100113 (the "Charge").

This Consent and Priority Agreement is evidence that in consideration of payment to it of ONE DOLLAR (\$1.00) by the transferee described in item 6 of Part 1 of the Form C to which this Consent and Priority Agreement is attached (the "Transferee"), the Chargeholder agrees with the Transferee as follows:

The Chargeholder consents to the granting and registration of the Agreement and the Chargeholder agrees that the Agreement binds its interest in and to the Lands.

The Chargeholder grants to the Transferee priority for the Agreement over the Chargeholder's right, title and interest in and to the Lands and the Chargeholder postpones the Charge and all of its right, title and interest thereunder to the Agreement as if the Agreement had been executed, delivered and registered prior to the execution, delivery and registration of the Charge.

As evidence of its agreement with the Transferee to be bound by this Consent and Priority Agreement, as a contract and as a deed executed and delivered under seal, the Chargeholder has executed and delivered this Consent and Priority Agreement by executing Part 1 of the *Land Title Act* Form C to which this Consent and Priority Agreement is attached and which forms part of this Consent and Priority Agreement.

Schedule "A"

REFERENCE PLAN OF COVENANT OVER PART OF THE COMMON PROPERTY AND STRATA LOTS 4 TO 8 AND 10 TO 11 AND 14 TO 23 AND 26 TO 29 AND 31 TO 34 AND 40 TO 43 AND 48 TO 57 AND 60 TO 62, STRATA PLAN KAS, SEC. 30, TP. 26, O.D.Y.D.

R.C.S.S. No. 82 E 083 PURSUANT TO SEC. 80(3)(d) LAND TITLE ACT

SCALE 1:2000 (All dimensions are in metres)

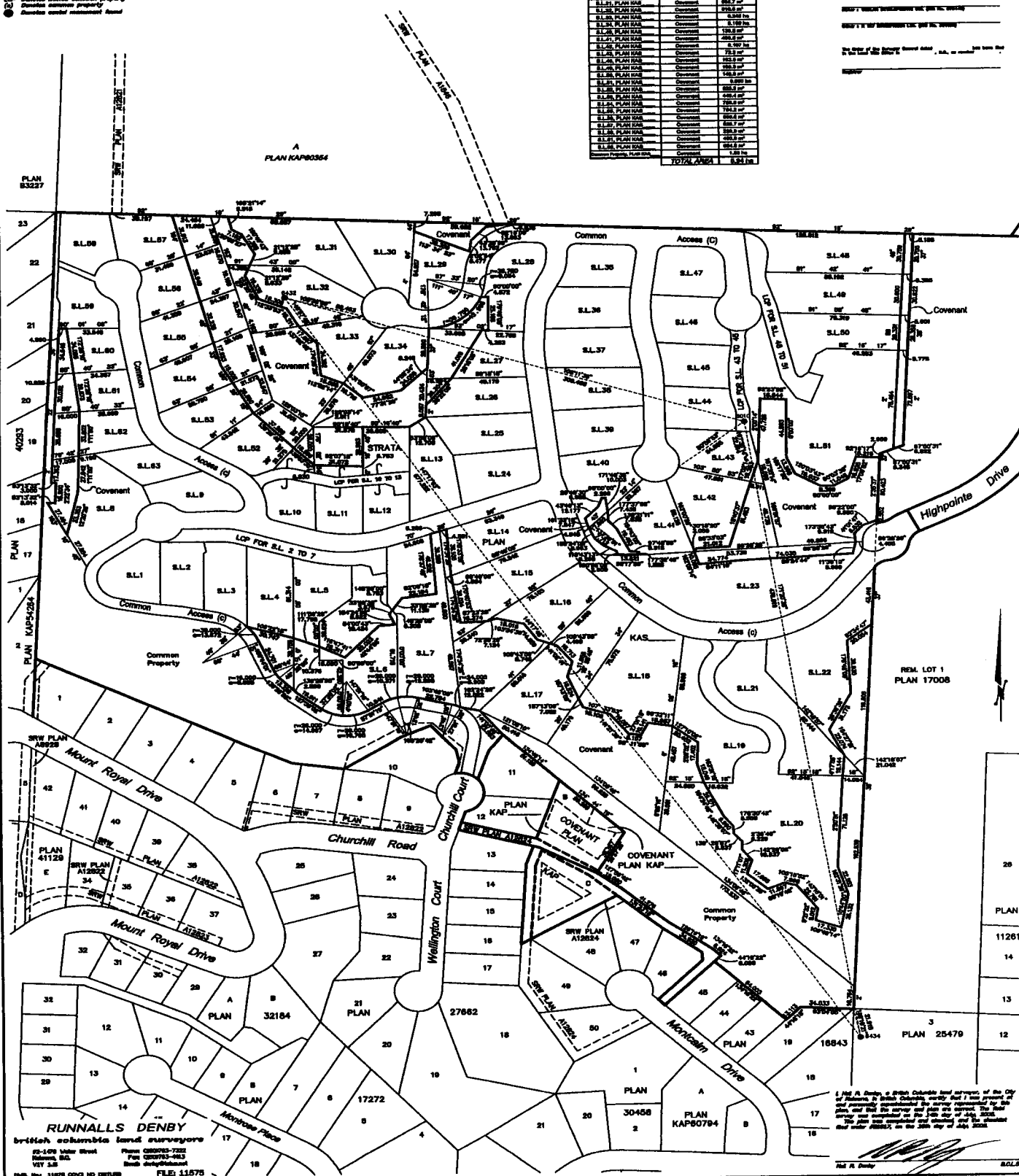
This plan has with the Registered Status of Control Change

LEGEND

- SRW boundaries are defined from Plan 1002
- SRW boundaries are defined from Plan 1002
- SRW boundaries are defined from Plan 1002
- SRW boundaries are defined from Plan 1002

Location	Description	Area
S.L. 1 PLAN KAS	Common	241.2 sq
S.L. 2 PLAN KAS	Common	1.2 sq
S.L. 3 PLAN KAS	Common	1.2 sq
S.L. 4 PLAN KAS	Common	1.2 sq
S.L. 5 PLAN KAS	Common	1.2 sq
S.L. 6 PLAN KAS	Common	1.2 sq
S.L. 7 PLAN KAS	Common	1.2 sq
S.L. 8 PLAN KAS	Common	1.2 sq
S.L. 9 PLAN KAS	Common	1.2 sq
S.L. 10 PLAN KAS	Common	1.2 sq
S.L. 11 PLAN KAS	Common	1.2 sq
S.L. 12 PLAN KAS	Common	1.2 sq
S.L. 13 PLAN KAS	Common	1.2 sq
S.L. 14 PLAN KAS	Common	1.2 sq
S.L. 15 PLAN KAS	Common	1.2 sq
S.L. 16 PLAN KAS	Common	1.2 sq
S.L. 17 PLAN KAS	Common	1.2 sq
S.L. 18 PLAN KAS	Common	1.2 sq
S.L. 19 PLAN KAS	Common	1.2 sq
S.L. 20 PLAN KAS	Common	1.2 sq
S.L. 21 PLAN KAS	Common	1.2 sq
S.L. 22 PLAN KAS	Common	1.2 sq
S.L. 23 PLAN KAS	Common	1.2 sq
S.L. 24 PLAN KAS	Common	1.2 sq
S.L. 25 PLAN KAS	Common	1.2 sq
S.L. 26 PLAN KAS	Common	1.2 sq
S.L. 27 PLAN KAS	Common	1.2 sq
S.L. 28 PLAN KAS	Common	1.2 sq
S.L. 29 PLAN KAS	Common	1.2 sq
S.L. 30 PLAN KAS	Common	1.2 sq
S.L. 31 PLAN KAS	Common	1.2 sq
S.L. 32 PLAN KAS	Common	1.2 sq
S.L. 33 PLAN KAS	Common	1.2 sq
S.L. 34 PLAN KAS	Common	1.2 sq
S.L. 35 PLAN KAS	Common	1.2 sq
S.L. 36 PLAN KAS	Common	1.2 sq
S.L. 37 PLAN KAS	Common	1.2 sq
S.L. 38 PLAN KAS	Common	1.2 sq
S.L. 39 PLAN KAS	Common	1.2 sq
S.L. 40 PLAN KAS	Common	1.2 sq
S.L. 41 PLAN KAS	Common	1.2 sq
S.L. 42 PLAN KAS	Common	1.2 sq
S.L. 43 PLAN KAS	Common	1.2 sq
S.L. 44 PLAN KAS	Common	1.2 sq
S.L. 45 PLAN KAS	Common	1.2 sq
S.L. 46 PLAN KAS	Common	1.2 sq
S.L. 47 PLAN KAS	Common	1.2 sq
S.L. 48 PLAN KAS	Common	1.2 sq
S.L. 49 PLAN KAS	Common	1.2 sq
S.L. 50 PLAN KAS	Common	1.2 sq
S.L. 51 PLAN KAS	Common	1.2 sq
S.L. 52 PLAN KAS	Common	1.2 sq
S.L. 53 PLAN KAS	Common	1.2 sq
S.L. 54 PLAN KAS	Common	1.2 sq
S.L. 55 PLAN KAS	Common	1.2 sq
S.L. 56 PLAN KAS	Common	1.2 sq
S.L. 57 PLAN KAS	Common	1.2 sq
S.L. 58 PLAN KAS	Common	1.2 sq
S.L. 59 PLAN KAS	Common	1.2 sq
S.L. 60 PLAN KAS	Common	1.2 sq
S.L. 61 PLAN KAS	Common	1.2 sq
S.L. 62 PLAN KAS	Common	1.2 sq
TOTAL AREA		8.21 sq

PLAN KAP  
Deposited in the Land Title Office of Manitoba, S.C.  
Day of



END OF DOCUMENT

File: 10500-30-613  
Surveyor's File: 11575-COV3 No Disturb  
Neil Denby, B.C.L.S.

*LAND TITLE ACT*

Section 69

ORDER

I, Rick Hargraves, Surveyor General of the Province of British Columbia, do hereby consent, pursuant to the provisions of section 69 of the *Land Title Act*, Chapter 250, R. S. 1996, to the reference plan of covenant over part of the common property and Strata Lots 4 to 8 and 10 to 11 and 14 to 23 and 26 to 29 and 31 to 34 and 40 to 43 and 48 to 57 and 60 to 62, Strata Plan KAS003162 Section 30, Township 26, Osoyoos Division of Yale District, in the following manner and subject to the following conditions:

- (a) Instead of requiring a post or a monument to be placed at each angle of each of the new parcels into which the area is to be subdivided, the surveyor making the survey shall reference certain angles in the road boundaries by monuments of type 1 or type 2 as defined in the General Survey Instruction Rules regarding permanent survey monuments at an approved density.
- (b) The plan of such survey shall in all other respects conform with the provisions of the *Land Title Act* and, before deposit, thereunder, shall be approved by me. The plan shall show evidence that the subdivider agrees to abide by all the provisions of this order.
- (c) Not later than one year from the date of the completion of the block outline survey, or within such further time as I may upon application made within said one year, allow, the surveyor initiating the block outline survey shall post each angle of each parcel created by said survey in accordance with the provisions of the *Land Title Act* survey and the General Survey Instruction Rules.
- (d) A plan of the posting required by Clause (c) made in all respects to comply with the survey and plan drafting provisions of the *Land Title Act* shall upon approval by me, be tendered for deposit by the subdivider in the Land Title Office in Kamloops, British Columbia.
- (e) The Registrar, shall, upon the deposit of the posting plan, make reference to its deposit upon the plan referred to in clause (b) hereof, and, thereupon the two plans shall thenceforth for all purposes be deemed complementary and be read as one plan of the survey.
- (f) This order shall accompany the deposit of the plan referred to in clause (b) hereof and the Registrar shall make an appropriate reference to this order on that plan.

IN WITNESS WHEREOF, I have hereto set my hand at Victoria, British Columbia, this 13th day of December, 2006.



Jeff Beddoes, B.C.L.S., C.L.S.  
for Surveyor General

No NUMBER  
PLAN 54

**LAND TITLE ACT**

FORM 11(a)  
(Section 99(1)(e), (j), and (k))

**APPLICATION FOR DEPOSIT OF REFERENCE OR EXPLANATORY PLAN (CHARGE)**

I, Tom Smithwick, Q.C., Barrister and Solicitor, of 200-1465 Ellis Street, in the City of Kelowna, in the Province of British Columbia V1Y 2A3, on behalf of City of Kelowna, 1435 Water Street, Kelowna, BC V1Y 1J4 apply to deposit reference/explanatory plan of:

PID: nil

Common property and Strata Lots 4 to 8, and 10 to 11, and 14 to 23, and 26 to 29, and 31 to 34, and 40 to 43, and 48 to 57, and 60 to 62,  
Sec. 30, Tp. 26, ODYD, Strata Plan KAS **003162**

I enclose:

- 1. The reference/explanatory plan.
- 2. The reproductions of the plan required by section 67(u).
- 3. Fees of \$ 54.00 .

01 07/01/12 15:03:37 01 KL  
S/S/OT PLANS

973112  
\$54.00

DATED this 28<sup>th</sup> day of December, 2006.

TOM SMITHWICK, Q.C.  
Telephone: 763-7646

- NOTE:**
- (i) Under section 67(s) the following reproductions of the plan must accompany this application:
    - (a) One blue linen original (alternatively, white linen or original transparencies).
    - (b) One duplicate transparency.
    - (c) One whiteprint is required as a worksheet for the Land Title Office.
  - (ii) The following further requirements may be necessary:
    - (a) If the parent property is in an Agricultural Land reserve, a release is required unless the parent property is less than 2 acres (app. 0.8094 hectare) or where, for permitted uses, an approving officer has signed the plan under section 1(1)(a) and (b) of the Subdivision and Land Use Regulations (B.C. Reg. 7/81) under the Agricultural Land Commission Act.
    - (b) Where a notice respecting a grant under the Home Purchase Assistance Act is endorsed on title, an extra white print must accompany the application, unless the Ministry of Lands, Parks and Housing agrees otherwise in writing. This extra print must contain the following endorsement:  
"The eligible residence as defined by the Home Purchase Assistance Act is located on lot \_\_\_  
\_\_\_ created by this plan.  
  
(B.C.L.S. or solicitor for the owner)
    - (c) Controlled access approval must be evident on the plan where parent property adjoins a highway that is designated as a controlled access highway.
    - (d) Where the plan refers to a covenant to be made under section 219, the instrument containing the covenant must be tendered with the plan.

**ASSIGNED PLAN NO.**  
**KAP 82881**

JAN 2007 14 58/31

LB005119 12 JAN 2007 14 58

LB005118

Land Title Act

Form C

(Section 233)

Province of British Columbia

GENERAL INSTRUMENT - PART 1

(This area for Land Title Office use)

Page 1 of 9 pages

SUBMITTED BY  
KERSHAW KUROYAMA

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

Porter Ramsay, Lawyers  
#200 - 1465 Ellis Street, Kelowna BC V1Y 2A3  
Helve Raun (250) 763-7646 File No. 63418-1-44  
LTO Client No. 10563 (Highpointe)

  
Signature of Applicant's Solicitor or Agent

2. PARCEL IDENTIFIER(S) AND LEGAL DESCRIPTION(S) OF LAND:\*

(PID) (LEGAL DESCRIPTION)  
See Schedule See Schedule

3. NATURE OF INTEREST:\*

DESCRIPTION	DOCUMENT REFERENCE (page and paragraph)	PERSON ENTITLED TO INTEREST
See Schedule	See Schedule	See Schedule

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

- (a) Filed Standard Charge Terms  D.F. No.
- (b) Express Charge Terms  Annexed as Part 2
- (c) Release  There is no Part 2 of this instrument

01 07/01/12 15:03:47 01 KL 973112  
CHARGE \$130.00

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):\* **WESLAN DEVELOPMENTS INC.** (Inc. #BC0675449) and **R 127 ENTERPRISES LTD.** (Inc. # BC0384163) as to Sec. 219 Covenant and **ROYAL BANK OF CANADA** as to Priority Agreement

6. TRANSFEREE(S): (including postal address(es) and postal code(s))\*  
**CITY OF KELOWNA, 1435 Water Street, Kelowna, BC V1Y 2J4**

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)


**TOM SMITHWICK, B.C.**  
Porter Ramsay  
BARRISTERS and SOLICITORS  
#200 - 1465 Ellis Street  
Kelowna, BC V1Y 2A3  
Phone: 763-7646

Execution Date

Y	M	D
06	07	27

Party(ies) Signature(s)

**WESLAN DEVELOPMENTS INC.**  
by its authorized signatory:

  
Print Name: Ron Lauthier

Officer Certification:

Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the Evidence Act, R.S.B.C. 1996, c. 124, to take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the Land Title Act as they pertain to the execution of this instrument. \* If space insufficient, enter "SEE SCHEDULE" and attach schedule in Form E. \*\* If space insufficient, continue executions on addition page(s) in Form D.

Plan 1410-7 +  
to lots 14 to 22  
Plan KAP82883  
to lots 31 to 33  
36 to 47  
27 to 57

(Covenant - No Build, Landscape Only)

LAND TITLE ACT  
**FORM D**  
EXECUTIONS CONTINUED

Officer's Signature(s)

Execution Date

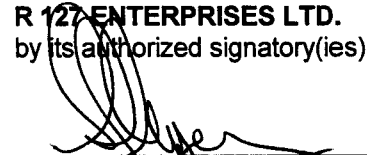
Transferor(s) Signature(s)



**TOM SMITHWICK, Q.C.**  
PORTER RAMSAY  
BARRISTERS and SOLICITORS  
#200 - 1465 Ellis Street  
Kelowna, BC V1Y 2A3  
Phone: 763-7646

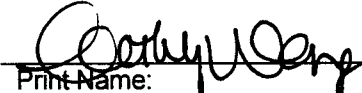
Y	M	D
06	07	24
06	07	31
06	11	27

R 127 ENTERPRISES LTD.  
by its authorized signatory(ies)

  
Print Name: **GEBY WAGER**

ROYAL BANK OF CANADA  
by its authorized signatory(ies):

  
Print Name: **Roger Sangerloo**  
Sr. Account Manager

  
Print Name: **Cathy Wong**  
Account Manager


As to priority over Mortgage No.  
KX100112 and Assignment of Rents  
KX100113

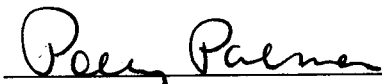
Transferee(s) Signature(s)

CITY OF KELOWNA  
by its authorized signatory(ies):

  
Print Name: **SHARON SHEPHERD, MAYOR**

  
Print Name: **STEPHEN FLEMING, DEPUTY CITY CLERK**

  
**Susan Jean Tanatmis**  
A Commissioner for Taking Affidavits for  
British Columbia  
36th (St. Johns) Avenue  
Vancouver, B.C., V6E 3S5

  
**POLLY PALMER**  
A COMMISSIONER FOR TAKING  
AFFIDAVITS OF BRITISH COLUMBIA  
1435 WATER STREET, KELOWNA, B.C.

**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.

*LAND TITLE ACT*  
**FORM E**  
**SCHEDULE**

ENTER THE REQUIRED INFORMATION IN THE SAME ORDER AS THE INFORMATION MUST APPEAR ON THE FREEDHOLD TRANSFER FORM, MORTGAGE FORM OR GENERAL INSTRUMENT FORM.

2. Parcel Identifier(s) and Legal Description(s) of Land

No PID s

Strata Lots 1 to 7 and 14 to 22 and 31 to 33  
 and 36 to 47 and 52 to 57  
 Section 30, Township 26, ODYD,  
 Strata Plan KAS **003162**

3. NATURE OF INTEREST:

DESCRIPTION

DOCUMENT  
 REFERENCE

PERSON ENTITLED  
 TO INTEREST

Section 219 Covenant over part  
 shown on Plan KAP 82882  
 And Plan KAP 82883

Pages 4 to 6

Transferee

Priority Agreement as to Section  
 219 Covenant numbered one less  
 than this document over Mortgage  
 KX100112 and Assignment of  
 Rents KX100113

Page 7

Transferee

**PART 2 - TERMS OF AGREEMENT: SECTION 219 COVENANT**

THIS INDENTURE made this \_\_\_\_\_ day of \_\_\_\_\_, 2006

BETWEEN:

**WESLAN DEVELOPMENTS INC. (Inc. No. BC0675449)**  
of 11<sup>TH</sup> Floor, 938 Howe Street  
Vancouver, BC V6Z 1N9

OF THE FIRST PART

And

**R 127 ENTERPRISES LTD. (Inc. No. BC0384163)**  
of #14 – 1020 Lanfranco Road  
Kelowna, BC V1W 3W6

OF THE SECOND PART

(jointly as the "Transferor")

AND:

**CITY OF KELOWNA**  
1435 Water Street  
Kelowna, BC V1Y 2J4

(the "Transferee")

OF THE THIRD PART

WHEREAS:

A. The Transferor is the registered owner of those lands and premises in the City of Kelowna, in the Province of British Columbia, legally described as:

Strata Lots 1 to 7 and 14 to 22 and 31 to 33 and 36 to 47 and 52 to 57  
Section 30, Township 26  
Osoyoos Division Yale District  
Strata Plan KAS ~~003162~~

(hereinafter referred to as the "Lands")

B. Section 219 of the *Land Title Act* provides that a covenant, in favour of a municipality as transferee, whether of a negative or positive nature, in respect to the use of land or that land is or is not to be built on in favour of the transferee, may be registered as a charge against the title to that land and is enforceable against the transferors and his successors in title even if the covenant is not annexed to land owned by the transferee.



NOW THEREFORE THIS AGREEMENT WITNESSETH that pursuant to Section 219 of the *Land Title Act*, and in consideration of the sum of ONE DOLLAR (\$1.00) now paid to the Transferors by the Transferee (the receipt and sufficiency whereof is hereby acknowledged), the parties hereto agree and covenant with each other as follows:

1. Hereafter no buildings, structures, pools, or improvements requiring a below grade foundation of any kind shall be constructed or located inside of that portion of the Lands outlined in bold black on two reference plans of the Lands, pursuant to Section 219 of the *Land Title Act* prepared by Runnalls Denby B.C.L.S. and dated the 14<sup>th</sup> day of July, 2006 and assigned registration number KAP 82882 and dated the 14<sup>th</sup> day of July, 2006 and assigned registration number KAP 82883, a copy of which is attached as Schedule "A" (hereinafter referred to as the "No Build Zone"), photo-reduced copies of which are attached as Schedule "A". Exceptions to this restriction shall include fencing as required to be placed by the Transferee or fencing as allowed under the Statutory Building Scheme and bylaws of the Strata Corporation or Bylaws of the Transferee, as well as soffits, roof overhangs and decks, hanging within the No Build Zone, provided that they are attached to a building located outside of the No Build Zone.

2. The Transferors, on behalf of themselves, their heirs, executors, successors and assigns agree to indemnify and save harmless the Transferee, their officers, employees or agents from all loss, damage, costs, action, suits, debts, accounts, claims and demands which the Transferee, their officers, employees or agents may suffer or incur or be put to arising out of or in any way connected with any breach of any covenant or agreement on the part of the Transferors or their heirs, successors, administrators and assigns contained in this Agreement or arising out of or in any way connected with any loss or damage suffered personally or in connection with any building, improvement, chattel or other construction including the contents of any of them, built, constructed or placed on the said Lands. This Covenant shall be binding upon the Transferors as a personal covenant only during the period of the Transferors' ownership of any interest in the Lands.

3. The Transferors do remise, release and forever discharge the Transferee and its officers, employees, servants or agents from all loss, damage, costs, actions, suits, debts, accounts, claims and demands which the Transferors or their heirs, executors, administrators, successors and assigns may have against the Transferee and its officers, employees, servants or agents from and by reason of any damage suffered personally or in connection with any

building, improvement, chattel or other structure, including the contents of them, built, constructed or placed within the No Build Zone located on the Lands.

4. This Agreement shall be construed as a covenant running with the Lands.

5. The parties agree that nothing contained or implied herein shall in any way prejudice or affect the powers of the Transferee in the exercise of its functions under any statute, bylaw, order or regulation, all of which may be fully exercised in relation to the Lands as if this Agreement had not been executed.

6. This Agreement shall enure to the benefit of and be binding upon the parties hereto, their respective successors and assigns. This Agreement is not to be amended or discharged without the consent of the City of Kelowna.

7. If any part of this Agreement is found to be illegal or unenforceable, that part will be considered separate and severable from the rest and the remaining parts will not be affected hereby and will be enforceable to the fullest extent permitted by law.

8. It is understood and agreed that, by registration of this Covenant as a charge against title to the Lands, the Transferee assumes no responsibility for enforcement of the terms of this Covenant. It is understood and agreed that at all times the Transferors are responsible for ensuring compliance with this Covenant.

This is the instrument creating the condition or covenant entered into under Section 219 of the *Land Title Act* by the registered owners referred to herein.

  
Approving Officer

Nov. 27, 2006

### CONSENT AND PRIORITY AGREEMENT

GIVEN THAT Royal Bank of Canada (the "Chargeholder") is the holder of a mortgage and assignment of rents registered against the land referred to in the Section 219 Covenant (the "Agreement") to which this Consent and Priority Agreement is attached, which mortgage and assignment of rents are registered in the Kamloops Land Title Office under instrument numbers KX100112 and KX100113 (the "Charge").

This Consent and Priority Agreement is evidence that in consideration of payment to it of ONE DOLLAR (\$1.00) by the transferee described in item 6 of Part 1 of the Form C to which this Consent and Priority Agreement is attached (the "Transferee"), the Chargeholder agrees with the Transferee as follows:

The Chargeholder consents to the granting and registration of the Agreement and the Chargeholder agrees that the Agreement binds its interest in and to the Lands.

The Chargeholder grants to the Transferee priority for the Agreement over the Chargeholder's right, title and interest in and to the Lands and the Chargeholder postpones the Charge and all of its right, title and interest thereunder to the Agreement as if the Agreement had been executed, delivered and registered prior to the execution, delivery and registration of the Charge.

As evidence of its agreement with the Transferee to be bound by this Consent and Priority Agreement, as a contract and as a deed executed and delivered under seal, the Chargeholder has executed and delivered this Consent and Priority Agreement by executing Part 1 of the *Land Title Act* Form C to which this Consent and Priority Agreement is attached and which forms part of this Consent and Priority Agreement.



REFERENCE PLAN OF COVENANT OVER PART  
 OF STRATA LOTS 31 TO 33 AND 36 TO 47 AND 52 TO 57,  
 STRATA PLAN KAS \_\_\_\_\_, SEC. 30, TP. 26, O.D.Y.D.

SCALE 1:250 (As shown on a sheet)  
 The plan has been prepared in accordance with the provisions of the Act.

PLAN KAPROD54  
 PLAN AIR68  
 PLAN AIR69



**BOOK OF REFERENCES**

Lot No.	Area	Reference
SL1	Common	SL1
SL2	Common	SL2
SL3	Common	SL3
SL4	Common	SL4
SL5	Common	SL5
SL6	Common	SL6
SL7	Common	SL7
SL8	Common	SL8
SL9	Common	SL9
SL10	Common	SL10
SL11	Common	SL11
SL12	Common	SL12
SL13	Common	SL13
SL14	Common	SL14
SL15	Common	SL15
SL16	Common	SL16
SL17	Common	SL17
SL18	Common	SL18
SL19	Common	SL19
SL20	Common	SL20
SL21	Common	SL21
SL22	Common	SL22
SL23	Common	SL23
SL24	Common	SL24
SL25	Common	SL25
SL26	Common	SL26
SL27	Common	SL27
SL28	Common	SL28
SL29	Common	SL29
SL30	Common	SL30
SL31	Common	SL31
SL32	Common	SL32
SL33	Common	SL33
SL34	Common	SL34
SL35	Common	SL35
SL36	Common	SL36
SL37	Common	SL37
SL38	Common	SL38
SL39	Common	SL39
SL40	Common	SL40
SL41	Common	SL41
SL42	Common	SL42
SL43	Common	SL43
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SL45	Common	SL45
SL46	Common	SL46
SL47	Common	SL47
SL48	Common	SL48
SL49	Common	SL49
SL50	Common	SL50
SL51	Common	SL51
SL52	Common	SL52
SL53	Common	SL53
SL54	Common	SL54
SL55	Common	SL55
SL56	Common	SL56
SL57	Common	SL57

**RUNNALLS DENBY**  
 10000 100th Ave S.E.  
 Seattle, WA 98148  
 Tel: 206-465-1234  
 Fax: 206-465-1235  
 Email: runnalls@denby.com

I, the undersigned, being a duly qualified and licensed Professional Engineer, do hereby certify that the above is a true and correct copy of the original plan as filed in the office of the Registrar of Titles, British Columbia, on this \_\_\_\_\_ day of \_\_\_\_\_, 2007.

\_\_\_\_\_  
 Registered Professional Engineer

File: 10500-30-606  
Surveyor's File: 11575-COV5A Landscape  
Neil Denby, B.C.L.S.

*LAND TITLE ACT*

Section 69

ORDER

I, Rick Hargraves, Surveyor General of the Province of British Columbia, do hereby consent, pursuant to the provisions of section 69 of the *Land Title Act*, Chapter 250, R. S. 1996, to the reference plan of covenant over part of Strata Lots 1 to 7 and 14 to 22, Strata Plan KAS **003162** Section 30, Township 26, Osoyoos Division of Yale District, in the following manner and subject to the following conditions:

- (a) Instead of requiring a post or a monument to be placed at each angle of each of the new parcels into which the area is to be subdivided, the surveyor making the survey shall reference certain angles in the road boundaries by monuments of type 1 or type 2 as defined in the General Survey Instruction Rules regarding permanent survey monuments at an approved density.
- (b) The plan of such survey shall in all other respects conform with the provisions of the *Land Title Act* and, before deposit, thereunder, shall be approved by me. The plan shall show evidence that the subdivider agrees to abide by all the provisions of this order.
- (c) Not later than one year from the date of the completion of the block outline survey, or within such further time as I may upon application made within said one year, allow, the surveyor initiating the block outline survey shall post each angle of each parcel created by said survey in accordance with the provisions of the *Land Title Act* survey and the General Survey Instruction Rules.
- (d) A plan of the posting required by Clause (c) made in all respects to comply with the survey and plan drafting provisions of the *Land Title Act* shall upon approval by me, be tendered for deposit by the subdivider in the Land Title Office in Kamloops, British Columbia.
- (e) The Registrar, shall, upon the deposit of the posting plan, make reference to its deposit upon the plan referred to in clause (b) hereof, and, thereupon the two plans shall thenceforth for all purposes be deemed complementary and be read as one plan of the survey.
- (f) This order shall accompany the deposit of the plan referred to in clause (b) hereof and the Registrar shall make an appropriate reference to this order on that plan.

IN WITNESS WHEREOF, I have hereto set my hand at Victoria, British Columbia, this 13th day of December, 2006.



Jeff Beddoes, B.C.L.S., C.L.S.  
for Surveyor General

File: 10500-30-607  
Surveyor's File: 11575-COV5B Landscape  
Neil Denby, B.C.L.S.

*LAND TITLE ACT*

Section 69

ORDER

I, Rick Hargraves, Surveyor General of the Province of British Columbia, do hereby consent, pursuant to the provisions of section 69 of the *Land Title Act*, Chapter 250, R. S. 1996, to the reference plan of covenant over part of Strata Lots 31 to 33 and 36 to 47 and 52 to 57, Strata Plan KAS003162, Section 30, Township 26, Osoyoos Division of Yale District, in the following manner and subject to the following conditions:

- (a) Instead of requiring a post or a monument to be placed at each angle of each of the new parcels into which the area is to be subdivided, the surveyor making the survey shall reference certain angles in the road boundaries by monuments of type 1 or type 2 as defined in the General Survey Instruction Rules regarding permanent survey monuments at an approved density.
- (b) The plan of such survey shall in all other respects conform with the provisions of the *Land Title Act* and, before deposit, thereunder, shall be approved by me. The plan shall show evidence that the subdivider agrees to abide by all the provisions of this order.
- (c) Not later than one year from the date of the completion of the block outline survey, or within such further time as I may upon application made within said one year, allow, the surveyor initiating the block outline survey shall post each angle of each parcel created by said survey in accordance with the provisions of the *Land Title Act* survey and the General Survey Instruction Rules.
- (d) A plan of the posting required by Clause (c) made in all respects to comply with the survey and plan drafting provisions of the *Land Title Act* shall upon approval by me, be tendered for deposit by the subdivider in the Land Title Office in Kamloops, British Columbia.
- (e) The Registrar, shall, upon the deposit of the posting plan, make reference to its deposit upon the plan referred to in clause (b) hereof, and, thereupon the two plans shall thenceforth for all purposes be deemed complementary and be read as one plan of the survey.
- (f) This order shall accompany the deposit of the plan referred to in clause (b) hereof and the Registrar shall make an appropriate reference to this order on that plan.

IN WITNESS WHEREOF, I have hereto set my hand at Victoria, British Columbia, this 13th day of December, 2006.



Jeff Beddoes, B.C.L.S., C.L.S.  
for Surveyor General

No NUMBER  
PLAN 54

**LAND TITLE ACT**

FORM 11(a)  
(Section 99(1)(e), (j), and (k))

**APPLICATION FOR DEPOSIT OF REFERENCE OR EXPLANATORY PLAN (CHARGE)**

I, Tom Smithwick, Q.C., Barrister and Solicitor, of 200-1465 Ellis Street, in the City of Kelowna, in the Province of British Columbia V1Y 2A3, on behalf City of Kelowna, 1435 Water Street, Kelowna, BC V1Y 1J4 apply to deposit reference/explanatory plan of:

PID: nil

Strata Lots ~~21~~<sup>1</sup> to ~~33~~<sup>7</sup>, and ~~36~~<sup>14</sup> to ~~47~~<sup>22</sup>, and ~~52 to 57~~,  
Sec. 30, Tp. 26, ODYD, Strata Plan KAS **003162**

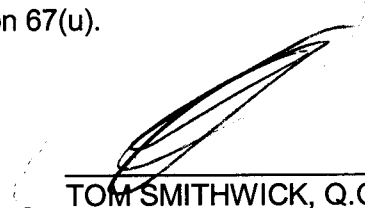
I enclose:

1. The reference/explanatory plan.
2. The reproductions of the plan required by section 67(u).
3. Fees of \$ 54.00 .

01 07/01/12 15:03:55 01 KL  
S/S/OT PLANS

973112  
\$54.00

DATED this 28<sup>th</sup> day of December, 2006.

  
\_\_\_\_\_  
TOM SMITHWICK, Q.C.  
Telephone: 763-7646

- NOTE:**
- (i) Under section 67(s) the following reproductions of the plan must accompany this application:
    - (a) One blue linen original (alternatively, white linen or original transparencies).
    - (b) One duplicate transparency.
    - (c) One whiteprint is required as a worksheet for the Land Title Office.
  - (ii) The following further requirements may be necessary:
    - (a) If the parent property is in an Agricultural Land reserve, a release is required unless the parent property is less than 2 acres (app. 0.8094 hectare) or where, for permitted uses, an approving officer has signed the plan under section 1(1)(a) and (b) of the Subdivision and Land Use Regulations (B.C. Reg. 7/81) under the Agricultural Land Commission Act.
    - (b) Where a notice respecting a grant under the Home Purchase Assistance Act is endorsed on title, an extra white print must accompany the application, unless the Ministry of Lands, Parks and Housing agrees otherwise in writing. This extra print must contain the following endorsement:  
"The eligible residence as defined by the Home Purchase Assistance Act is located on lot \_\_\_\_ created by this plan.  
  
(B.C.L.S. or solicitor for the owner)
    - (c) Controlled access approval must be evident on the plan where parent property adjoins a highway that is designated as a controlled access highway.
    - (d) Where the plan refers to a covenant to be made under section 219, the instrument containing the covenant must be tendered with the plan.

**ASSIGNED PLAN NO.**

**KAP 82882**



No NUMBER  
PLAN 54

**LAND TITLE ACT**

FORM 11(a)  
(Section 99(1)(e), (j), and (k))

**APPLICATION FOR DEPOSIT OF REFERENCE OR EXPLANATORY PLAN (CHARGE)**

I, Tom Smithwick, Q.C., Barrister and Solicitor, of 200-1465 Ellis Street, in the City of Kelowna, in the Province of British Columbia V1Y 2A3, on behalf City of Kelowna, 1435 Water Street, Kelowna, BC V1Y 1J4 apply to deposit reference/explanatory plan of:

PID: nil

Strata Lots 31 to 33, and 36 to 47, and 52 to 57,  
Sec. 30, Tp. 26, ODYD, Strata Plan KAS **003162**

01 07/01/12 15:12:39 01 KL  
S/S/OT PLANS

973114  
\$54.00

I enclose:

1. The reference/explanatory plan.
2. The reproductions of the plan required by section 67(u).
3. Fees of \$54.00.

DATED this 28<sup>th</sup> day of December, 2006.



TOM SMITHWICK, Q.C.  
Telephone: 763-7646

- NOTE:**
- (i) Under section 67(s) the following reproductions of the plan must accompany this application:
    - (a) One blue linen original (alternatively, white linen or original transparencies).
    - (b) One duplicate transparency.
    - (c) One whiteprint is required as a worksheet for the Land Title Office.
  - (ii) The following further requirements may be necessary:
    - (a) If the parent property is in an Agricultural Land reserve, a release is required unless the parent property is less than 2 acres (app. 0.8094 hectare) or where, for permitted uses, an approving officer has signed the plan under section 1(1)(a) and (b) of the Subdivision and Land Use Regulations (B.C. Reg. 7/81) under the Agricultural Land Commission Act.
    - (b) Where a notice respecting a grant under the Home Purchase Assistance Act is endorsed on title, an extra white print must accompany the application, unless the Ministry of Lands, Parks and Housing agrees otherwise in writing. This extra print must contain the following endorsement:  
"The eligible residence as defined by the Home Purchase Assistance Act is located on lot \_\_\_  
\_\_\_ created by this plan.  
  
(B.C.L.S. or solicitor for the owner)
    - (c) Controlled access approval must be evident on the plan where parent property adjoins a highway that is designated as a controlled access highway.
    - (d) Where the plan refers to a covenant to be made under section 219, the instrument containing the covenant must be tendered with the plan.

**ASSIGNED PLAN NO.**  
**KAP 82883**

Land Title Act Form C (Section 233) Province of British Columbia

12 JAN 2007 14 58

LB005120

GENERAL INSTRUMENT - PART 1

(This area for Land Title Office use)

Page 1 of 8 pages

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

Porter Ramsay, Lawyers #200 - 1465 Ellis Street, Kelowna BC V1Y 2A3 Helve Raun (250) 763-7646 File No. 63418-1-44 LTO Client No. 10563 (Highpointe)

Signature of Applicant's Solicitor or Agent

2. PARCEL IDENTIFIER(S) AND LEGAL DESCRIPTION(S) OF LAND:\*

(PID) See Schedule (LEGAL DESCRIPTION) See Schedule

3. NATURE OF INTEREST:\*

DESCRIPTION See Schedule DOCUMENT REFERENCE (page and paragraph) See Schedule PERSON ENTITLED TO INTEREST See Schedule

01 CHARGE 07/01/12 15:04:07 01 KL

97311 \$130.0

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

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

Form with checkboxes for D.F. No., Annexed as Part 2, and 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):\* WESLAN DEVELOPMENTS INC. (Inc. #BC0675449) and R 127 ENTERPRISES LTD. (Inc. # BC0384163) as to Sec. 219 Covenant and ROYAL BANK OF CANADA as to Priority Agreement

6. TRANSFEREE(S): (including postal address(es) and postal code(s))\* CITY OF KELOWNA, 1435 Water Street, Kelowna, BC V1Y 2J4

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) TOM SMITHWICK, Q.C. Porter Ramsay BARRISTERS and SOLICITORS #200 - 1465 Ellis Street Kelowna, BC V1Y 2A3 Phone: 763-7646

Table with columns Y, M, D and values 06, 07, 27 representing Execution Date.

Party(ies) Signature(s) WESLAN DEVELOPMENTS INC. by its authorized signatory: Print Name: Renan Lathier

Officer Certification:

Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the Evidence Act, R.S.B.C. 1996, c. 124, to take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the Land Title Act as they pertain to the execution of this instrument. \* If space insufficient, enter "SEE SCHEDULE" and attach schedule in Form E. \*\* If space insufficient, continue executions on addition page(s) in Form D.

Handwritten notes: Plan KAP82284 lots 1 to 13 24 to 34 52 to 63 Plan KAP82285 lots 14 to 23 35 to 51

(Covenant - Building Envelope)

LAND TITLE ACT  
**FORM D**  
EXECUTIONS CONTINUED

Officer's Signature(s)

Execution Date

Transferor(s) Signature(s)

Y	M	D
06	07	24
06	07	31
06	11	01

~~TOM SMITHWICK, O.C.~~  
~~ROBERT RAMSAY~~  
 BARRISTERS and SOLICITORS  
 #200 - 1465 Ellis Street  
 Kelowna, BC V1Y 2A3  
 Phone: 763-7646

**R 127 ENTERPRISES LTD.**  
 by its authorized signatory(ies)

Print Name: GEBY WAGER

S. Tanatmis  
**Susan Jean Tanatmis**  
 A Commissioner for Taking Affidavits for  
 British Columbia  
 36th Floor, 1055 West Georgia Street  
 Vancouver, B.C., V6E 3S5  
 (as to both signatories)

**ROYAL BANK OF CANADA**  
 by its authorized signatory(ies):

Roger Sangerloo  
 Print Name: **Roger Sangerloo**  
 Sr. Account Manager

Cathy Wong  
 Print Name: **Cathy Wong**  
 Account Manager

As to priority over Mortgage No.  
 KX100112 and Assignment of Rents  
 KX100113

Polly Palmer

**POLLY PALMER**  
 A COMMISSIONER FOR TAKING  
 AFFIDAVITS OF BRITISH COLUMBIA  
 (as to both signatories)  
 1435 WATER STREET, KELOWNA, B.C.

Transferee(s) Signature(s)

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

Sharon Shepherd  
 Print Name: **SHARON SHEPHERD, MAYOR**

Stephen Fleming  
 Print Name: **STEPHEN FLEMING, DEPUTY CITY CLERK**

**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.

LAND TITLE ACT  
**FORM E**  
**SCHEDULE**

ENTER THE REQUIRED INFORMATION IN THE SAME ORDER AS THE INFORMATION MUST APPEAR ON THE FREEDHOLD TRANSFER FORM, MORTGAGE FORM OR GENERAL INSTRUMENT FORM.

2. Parcel Identifier(s) and Legal Description(s) of Land

No PID s                      Strata Lots 1 to 63,  
All in Section 30, Township 26  
Osoyoos Division Yale District  
Strata Plan KAS ~~003162~~

3. NATURE OF INTEREST:  
DESCRIPTION

DOCUMENT  
REFERENCE

PERSON ENTITLED  
TO INTEREST

Section 219 Covenant

Pages 4 to 8

Transferee

Priority Agreement as to Section  
219 Covenant numbered one less  
than this document over Mortgage  
KX100112 and Assignment of  
Rents KX100113

Page 9

Transferee

**PART 2 - TERMS OF AGREEMENT: SECTION 219 COVENANT**

THIS INDENTURE made this 27<sup>th</sup> day of July, 2006

BETWEEN:

**WESLAN DEVELOPMENTS INC. (Inc. No. BC0675449)**  
of 11<sup>TH</sup> Floor, 938 Howe Street  
Vancouver, BC V6Z 1N9

OF THE FIRST PART

and

**R 127 ENTERPRISES LTD. (Inc. No. BC0384163)**  
of #14 – 1020 Lanfranco Road  
Kelowna, BC V1W 3W6

OF THE SECOND PART

(the "Transferors")

AND:

**CITY OF KELOWNA**  
1435 Water Street  
Kelowna, BC V1Y 2J4

(the "Transferee")

OF THE THIRD PART

WHEREAS:

A. The Transferor is the registered owner of those lands and premises in the City of Kelowna, in the Province of British Columbia, legally described as:

Strata Lots 1 to 63  
Section 30, Township 26  
Osoyoos Division Yale District  
Strata Plan KAS **003162**

(hereinafter referred to as the "Lands")

B. Section 219 of the *Land Title Act* provides that a covenant, in favour of the Transferee, whether of a negative or positive nature, in respect to the use of land or that land is or is not to be built on in favour of the transferee, may be registered as a charge against the title to that land and is enforceable against the transferors and his successors in title even if the covenant is not annexed to land owned by the Transferee.

NOW THEREFORE THIS AGREEMENT WITNESSETH that pursuant to Section 219 of the *Land Title Act*, and in consideration of the sum of ONE DOLLAR (\$1.00) now paid to the Transferor by the Transferee (the receipt and sufficiency whereof is hereby acknowledged), the parties hereto agree and covenant with each other as follows:

1. Hereafter no buildings or structures for human habitation, porches, decks or garages for storage of automobiles shall be constructed or located on that portion of the Lands outside of the area outlined in bold black on that two reference plans of the Lands, pursuant to Section 219 of the *Land Title Act*, prepared by Runnalls Denby BCLS and dated the 14<sup>th</sup> day of July, 2006 and assigned registration number KAP 82884 and dated the 14<sup>th</sup> day of July, 2006 and assigned registration number KAP 82885 hereinafter referred to as the "Building Envelope"), photo-reduced copies of which are attached as Schedule "A". Exceptions to this restriction shall include non-enclosed, at grade patios, decks that are located solely on that one side of the Building Envelope opposite the strata lot's access road or access lane, as well as the soffits and roof overhangs for buildings referenced above.

2. The Transferors further agree that they shall not construct or locate any buildings or structures for human habitation or garages for storage of automobiles outside the Building Envelope without first obtaining the written consent of the Transferee.

3. Pools

This Section 3 is not intended to limit pools to the Building Envelope as outlined on the attached plan, but rather is intended to be the applicable covenant related to any pool constructed on any and all strata lots referenced herein wherever any pools are entitled to be constructed.

Above ground swimming pools are not permitted on any lot. In-ground swimming pools will be permitted, and should be safely fenced and gated, and located in an area which can be screened, through appropriate landscape treatments, from the view of neighbouring lots. Pool fencing should be tastefully designed to a maximum height of 6 feet (1.83 metres). Pools must be equipped with an approved drainage system, such drainage system to be configured as described below.

- i) The pool pump drain outlet shall be hard plumbed to an "acceptable point of water discharge".
- ii) On lots that are serviced with a stormwater service connection, the "acceptable point of water discharge" shall be the stormwater service connection.

- iii) On lots that are not serviced with a stormwater service connection, the "acceptable point of water discharge" shall be an inground rock pit, such rock pit to be located and sized by a qualified geotechnical engineer approved by the Transferor or Highpointe Strata Corporation (such as EBA Engineering Consultants Ltd.).

All pool equipment must be housed in a fully insulated structure that is architecturally compatible with the home – no metal sheds will be allowed. Pool equipment storage areas designed within the main house itself is strongly encouraged.

#### 4. Lot Grading and Drainage

This paragraph is not intended to limit lot grading and drainage to the Building Envelope as outlined on the attached plan, but rather is intended to be the applicable covenant related to any lot grading and drainage constructed on any and all strata lots referenced herein wherever any lot grading and drainage is entitled to be constructed.

Houses are to be designed to conform to existing lot grade conditions. Extensive cutting, filling and recontouring of building sites and yard areas will not be acceptable except in extreme circumstances. All grading shall present a finished appearance with rounded slope transitions.

The lot grading design shall ensure that:

- No onsite surface water is directed onto neighbouring lots.
- No onsite surface water is directed into the Non Disturbance areas of the site.

There are two sources of onsite surface water, namely roof drainage and ground surface drainage.

Roof drainage shall be disposed of in the following manner.

- i) Into the lot stormwater service connection (where the lot is serviced with a stormwater service connection).
- ii) Into an inground rock pit (where the lot is not serviced with a stormwater service connection), such rock pit to be located and sized by a qualified geotechnical engineer approved by the Transferor or Highpointe Strata Corporation (such as EBA Engineering Consultants Ltd.).

Collected ground surface drainage shall be disposed into lawn basin/rock pits and/or passive stormwater disposal areas (e.g. vegetated swale).

#### 5. Irrigation

This paragraph is not intended to limit irrigation to the Building Envelope as outlined on the attached plan, but rather is intended to be the applicable covenant related to any irrigation

constructed on any and all strata lots referenced herein wherever any irrigation is entitled to be constructed.

All properties will be required to install a fully automated underground irrigation system.

Recognizing the indigenous hillside setting of Highpointe, individual irrigation systems are required to be designed to specifically address the unique characteristics of each homesite. Homesites backing or siding onto environmentally sensitive areas shall utilize drip irrigation systems only within 10 metres upslope of all Non Disturbance areas. In some cases small areas of "pop up" irrigation may be allowed if necessary, to complete an adjacent landscape feature area. Underground "pop-up" heads will be allowed in other areas of the lot.

Additionally, all irrigation systems shall include rainfall sensors, and an individual water use meter.

In order to promote sustainable water use at Highpointe, each home's irrigation usage shall adhere to the latest water consumption use guideline as established by the City of Kelowna Water Smart Program.

6. The Transferors, on behalf of themselves, their heirs, executors, successors and assigns agree to indemnify and save harmless the Transferee, their officers, employees or agents from all loss, damage, costs, action, suits, debts, accounts, claims and demands which the Transferee, their officers, employees or agents may suffer or incur or be put to arising out of or in any way connected with any breach of any covenant or agreement on the part of the Transferors or their heirs, successors, administrators and assigns contained in this Agreement or arising out of or in any way connected with any loss or damage suffered personally or in connection with any building, or structure including the contents of any of them, built, constructed or placed on the said Lands. This Covenant shall be binding upon the Transferors as a personal covenant only during the period of the Transferors' ownership of any interest in the Lands.

7. The Transferors do remise, release and forever discharge the Transferee and its officers, employees, servants or agents from all loss, damage, costs, actions, suits, debts, accounts, claims and demands which the Transferors or their heirs, executors, administrators, successors and assigns may have against the Transferee and its officers, employees, servants



or agents from and by reason of any damage suffered personally or in connection with any building, or structure, including the contents of them, built, constructed or placed on the Lands outside the Building Envelope.

8. This Agreement shall be construed as a covenant running with the Lands. This Agreement is not be amended or discharged without the consent of the City of Kelowna.

9. The parties agree that nothing contained or implied herein shall in any way prejudice or affect the powers of the Transferee in the exercise of its functions under any statute, bylaw, order or regulation, all of which may be fully exercised in relation to the Lands as if this Agreement had not been executed.

10. This Agreement shall enure to the benefit of and be binding upon the parties hereto, their respective successors and assigns.

11. If any part of this Agreement is found to be illegal or unenforceable, that part will be considered separate and severable from the rest and the remaining parts will not be affected hereby and will be enforceable to the fullest extent permitted by law.

12. It is understood and agreed that, by registration of this Covenant as a charge against title to the Lands, the Transferee assumes no responsibility for enforcement of the terms of this Covenant. It is understood and agreed that at all times the Transferors from time to time are responsible for ensuring compliance with this Covenant.

This is the instrument creating the condition or covenant entered into under Section 219 of the *Land Title Act* by the registered owners referred to herein.

  
Approving Officer

Dec. 5, 2006

### CONSENT AND PRIORITY AGREEMENT

GIVEN THAT Royal Bank of Canada (the "Chargeholder") is the holder of a mortgage and assignment of rents registered against the land referred to in the Section 219 Covenant (the "Agreement") to which this Consent and Priority Agreement is attached, which mortgage and assignment of rents are registered in the Kamloops Land Title Office under instrument numbers KX100112 and KX100113 (the "Charge").

This Consent and Priority Agreement is evidence that in consideration of payment to it of ONE DOLLAR (\$1.00) by the transferee described in item 6 of Part 1 of the Form C to which this Consent and Priority Agreement is attached (the "Transferee"), the Chargeholder agrees with the Transferee as follows:

The Chargeholder consents to the granting and registration of the Agreement and the Chargeholder agrees that the Agreement binds its interest in and to the Lands.

The Chargeholder grants to the Transferee priority for the Agreement over the Chargeholder's right, title and interest in and to the Lands and the Chargeholder postpones the Charge and all of its right, title and interest thereunder to the Agreement as if the Agreement had been executed, delivered and registered prior to the execution, delivery and registration of the Charge.

As evidence of its agreement with the Transferee to be bound by this Consent and Priority Agreement, as a contract and as a deed executed and delivered under seal, the Chargeholder has executed and delivered this Consent and Priority Agreement by executing Part 1 of the *Land Title Act* Form C to which this Consent and Priority Agreement is attached and which forms part of this Consent and Priority Agreement.

Schedule "A"

REFERENCE PLAN OF COVENANT OVER PART OF STRATA LOTS 1 TO 13 AND 24 TO 34 AND 52 TO 63, STRATA PLAN KAS, SEC. 30, TP. 26, O.D.Y.D.

PLAN KAP

Registered in the Land Title Office of Manitoba, St. J. 2007

R.O.S.S. No. 48 E 687 FURNISHING TO REG. RECORDS LAND TITLE ACT

SCALE 1:5000 (As shown on to match)

This plan is with the original block of sealed drawings

LEGEND

- Red lines are derived from Strata Plan 206
- Blue lines are derived from Strata Plan 206
- Green lines are derived from Strata Plan 206
- Black lines are derived from Strata Plan 206

Consent to my Order dated ( ) the ( ) month of ( ) 2007

Surveyor General File 10000-20-000

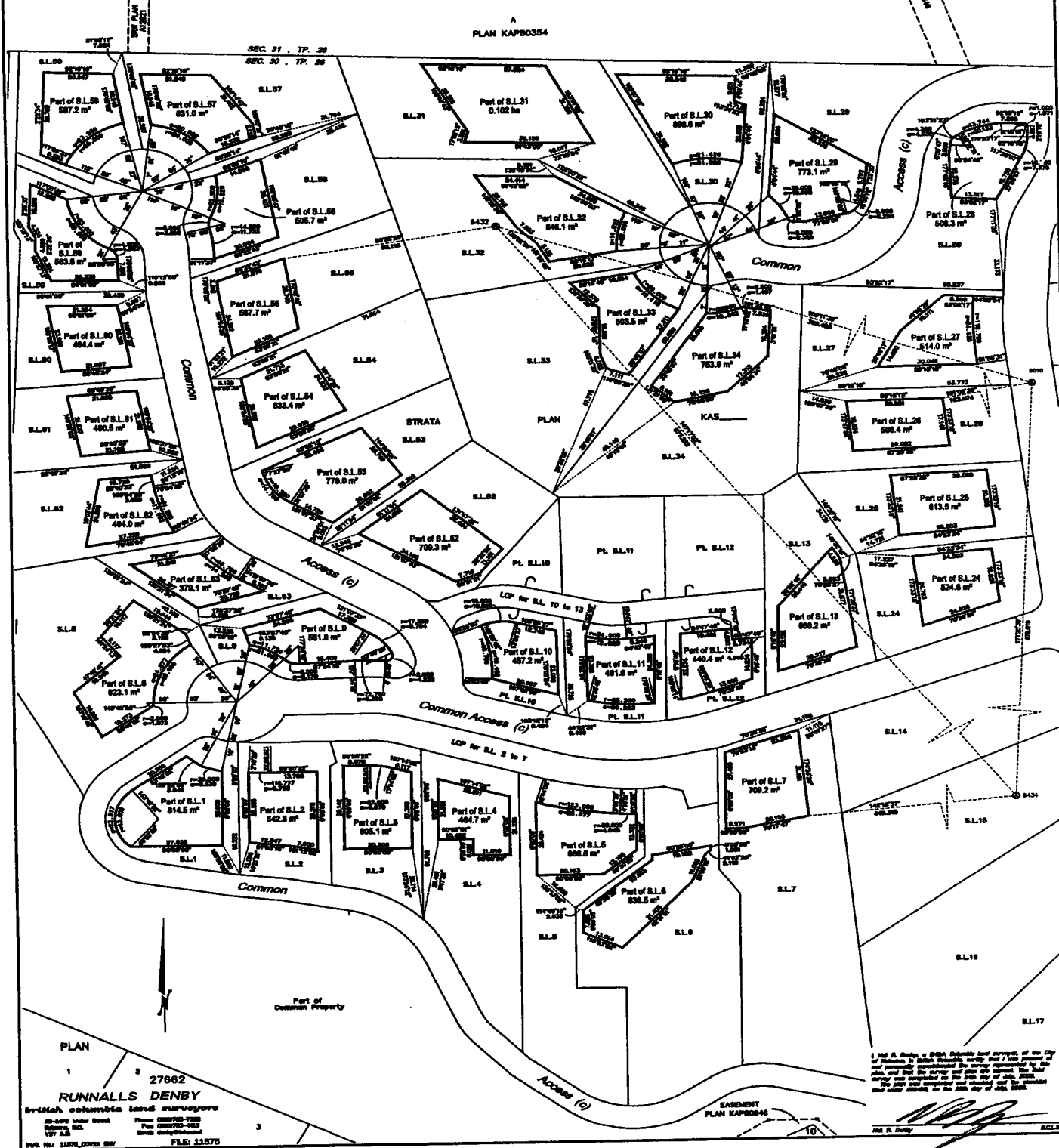
The conditions of the above mentioned Order are accepted

Order 1 10000-20-000

Order 1 10000-20-000

The Order of the Surveyor General dated ( ) the ( ) month of ( ) 2007

Signature

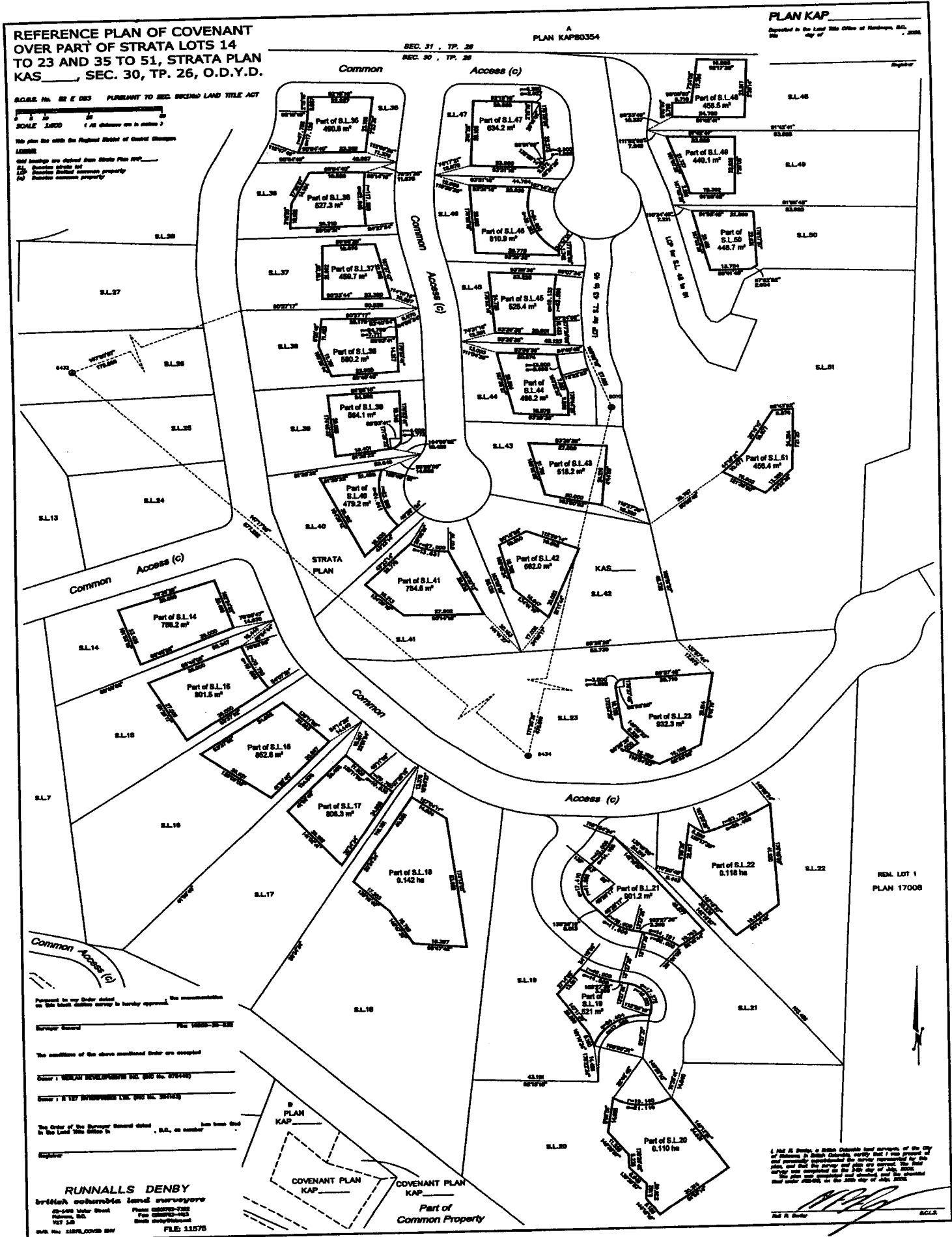


27862  
**RUNNALLS DENBY**  
 British Columbia Land Surveyors  
 20-470 Water Street  
 Victoria, BC  
 V7Y 2A5  
 Phone: 250-726-7288  
 Fax: 250-726-7483  
 Email: info@runnallsdenby.com  
 FLE: 11870

I, the Surveyor General, do hereby certify that this plan is a true and correct copy of the original plan as filed in my office. I have also certified that this plan is a true and correct copy of the original plan as filed in my office. I have also certified that this plan is a true and correct copy of the original plan as filed in my office.

Surveyor General  
 File 10000-20-000

Schedule "A"



File: 10500-30-614  
Surveyor's File: 11575-COV2A Env  
Neil Denby, B.C.L.S.

*LAND TITLE ACT*

Section 69

ORDER

I, Rick Hargraves, Surveyor General of the Province of British Columbia, do hereby consent, pursuant to the provisions of section 69 of the *Land Title Act*, Chapter 250, R. S. 1996, to the reference plan of covenant over part of Strata Lots 1 to 13 and 24 to 34 and 52 to 63, Strata Plan KAS 003162 Section 30, Township 26, Osoyoos Division of Yale District, in the following manner and subject to the following conditions:

- (a) Instead of requiring a post or a monument to be placed at each angle of each of the new parcels into which the area is to be subdivided, the surveyor making the survey shall reference certain angles in the road boundaries by monuments of type 1 or type 2 as defined in the General Survey Instruction Rules regarding permanent survey monuments at an approved density.
- (b) The plan of such survey shall in all other respects conform with the provisions of the *Land Title Act* and, before deposit, thereunder, shall be approved by me. The plan shall show evidence that the subdivider agrees to abide by all the provisions of this order.
- (c) Not later than one year from the date of the completion of the block outline survey, or within such further time as I may upon application made within said one year, allow, the surveyor initiating the block outline survey shall post each angle of each parcel created by said survey in accordance with the provisions of the *Land Title Act* survey and the General Survey Instruction Rules.
- (d) A plan of the posting required by Clause (c) made in all respects to comply with the survey and plan drafting provisions of the *Land Title Act* shall upon approval by me, be tendered for deposit by the subdivider in the Land Title Office in Kamloops, British Columbia.
- (e) The Registrar, shall, upon the deposit of the posting plan, make reference to its deposit upon the plan referred to in clause (b) hereof, and, thereupon the two plans shall thenceforth for all purposes be deemed complementary and be read as one plan of the survey.
- (f) This order shall accompany the deposit of the plan referred to in clause (b) hereof and the Registrar shall make an appropriate reference to this order on that plan.

IN WITNESS WHEREOF, I have hereto set my hand at Victoria, British Columbia, this 13th day of December, 2006.



Jeff Beddoes, B.C.L.S., C.L.S.  
for Surveyor General

File: 10500-30-615  
Surveyor's File: 11575-COV2B Env  
Neil Denby, B.C.L.S.

*LAND TITLE ACT*

Section 69

ORDER

I, Rick Hargraves, Surveyor General of the Province of British Columbia, do hereby consent, pursuant to the provisions of section 69 of the *Land Title Act*, Chapter 250, R. S. 1996, to the reference plan of covenant over part of Strata Lots 14 to 23 and 35 to 51, Strata Plan KAS ~~003162~~ Section 30, Township 26, Osoyoos Division of Yale District, in the following manner and subject to the following conditions:

- (a) Instead of requiring a post or a monument to be placed at each angle of each of the new parcels into which the area is to be subdivided, the surveyor making the survey shall reference certain angles in the road boundaries by monuments of type 1 or type 2 as defined in the General Survey Instruction Rules regarding permanent survey monuments at an approved density.
- (b) The plan of such survey shall in all other respects conform with the provisions of the *Land Title Act* and, before deposit, thereunder, shall be approved by me. The plan shall show evidence that the subdivider agrees to abide by all the provisions of this order.
- (c) Not later than one year from the date of the completion of the block outline survey, or within such further time as I may upon application made within said one year, allow, the surveyor initiating the block outline survey shall post each angle of each parcel created by said survey in accordance with the provisions of the *Land Title Act* survey and the General Survey Instruction Rules.
- (d) A plan of the posting required by Clause (c) made in all respects to comply with the survey and plan drafting provisions of the *Land Title Act* shall upon approval by me, be tendered for deposit by the subdivider in the Land Title Office in Kamloops, British Columbia.
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- (f) This order shall accompany the deposit of the plan referred to in clause (b) hereof and the Registrar shall make an appropriate reference to this order on that plan.

IN WITNESS WHEREOF, I have hereto set my hand at Victoria, British Columbia, this 13th day of December, 2006.



Jeff Beddoes, B.C.L.S., C.L.S.  
for Surveyor General

No NUMBER  
PLAN 54

**LAND TITLE ACT**

FORM 11(a)  
(Section 99(1)(e), (j), and (k))

**APPLICATION FOR DEPOSIT OF REFERENCE OR EXPLANATORY PLAN (CHARGE)**

I, Tom Smithwick, Q.C., Barrister and Solicitor, of 200-1465 Ellis Street, in the City of Kelowna, in the Province of British Columbia V1Y 2A3, on behalf City of Kelowna, 1435 Water Street, Kelowna, BC V1Y 1J4 apply to deposit reference/explanatory plan of:

PID: nil

Strata Lots 1 to 13, and 24 to 34, and 52 to 63, Sec. 30, Tp. 26, ODYD, Strata Plan  
KAS ~~003162~~


01 07/01/12 15:04:14 01 KL  
S/S/OT PLANS

973112  
\$54.00

I enclose:

1. The reference/explanatory plan.
2. The reproductions of the plan required by section 67(u).
3. Fees of \$ 54.00 .

DATED this 28<sup>th</sup> day of December, 2006.

  
 \_\_\_\_\_  
 TOM SMITHWICK, Q.C.  
 Telephone: 763-7646

- NOTE:**
- (i) Under section 67(s) the following reproductions of the plan must accompany this application:
    - (a) One blue linen original (alternatively, white linen or original transparencies).
    - (b) One duplicate transparency.
    - (c) One whiteprint is required as a worksheet for the Land Title Office.
  
  - (ii) The following further requirements may be necessary:
    - (a) If the parent property is in an Agricultural Land reserve, a release is required unless the parent property is less than 2 acres (app. 0.8094 hectare) or where, for permitted uses, an approving officer has signed the plan under section 1(1)(a) and (b) of the Subdivision and Land Use Regulations (B.C. Reg. 7/81) under the Agricultural Land Commission Act.
    - (b) Where a notice respecting a grant under the Home Purchase Assistance Act is endorsed on title, an extra white print must accompany the application, unless the Ministry of Lands, Parks and Housing agrees otherwise in writing. This extra print must contain the following endorsement:  
 "The eligible residence as defined by the Home Purchase Assistance Act is located on lot \_\_\_\_ created by this plan.  
  
 \_\_\_\_\_  
 (B.C.L.S. or solicitor for the owner)
    - (c) Controlled access approval must be evident on the plan where parent property adjoins a highway that is designated as a controlled access highway.
    - (d) Where the plan refers to a covenant to be made under section 219, the instrument containing the covenant must be tendered with the plan.

**ASSIGNED PLAN NO.**  
**KAP 82884**

No NUMBER  
PLAN 54

**LAND TITLE ACT**

FORM 11(a)  
(Section 99(1)(e), (j), and (k))

**APPLICATION FOR DEPOSIT OF REFERENCE OR EXPLANATORY PLAN (CHARGE)**

I, Tom Smithwick, Q.C., Barrister and Solicitor, of 200-1465 Ellis Street, in the City of Kelowna, in the Province of British Columbia V1Y 2A3, on behalf of City of Kelowna, 1435 Water Street, Kelowna, BC V1Y 1J4 apply to deposit reference/explanatory plan of:

PID: nil

Strata Lots 14 to 23, and 35 to 51,  
Sec. 30, Tp. 26, ODYD, Strata Plan KAS **003162**

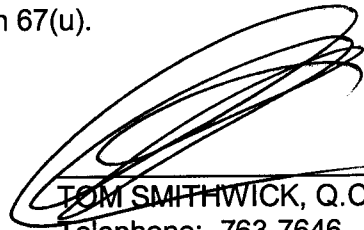
01 07/01/12 15:12:19 01 KL  
S/S/OT PLANS

973113  
\$54.00

I enclose:

- 1. The reference/explanatory plan.
- 2. The reproductions of the plan required by section 67(u).
- 3. Fees of \$

DATED this 28<sup>th</sup> day of December, 2006.



TOM SMITHWICK, Q.C.  
Telephone: 763-7646

- NOTE:**
- (i) Under section 67(s) the following reproductions of the plan must accompany this application:
    - (a) One blue linen original (alternatively, white linen or original transparencies).
    - (b) One duplicate transparency.
    - (c) One whiteprint is required as a worksheet for the Land Title Office.
  - (ii) The following further requirements may be necessary:
    - (a) If the parent property is in an Agricultural Land reserve, a release is required unless the parent property is less than 2 acres (app. 0.8094 hectare) or where, for permitted uses, an approving officer has signed the plan under section 1(1)(a) and (b) of the Subdivision and Land Use Regulations (B.C. Reg. 7/81) under the Agricultural Land Commission Act.
    - (b) Where a notice respecting a grant under the Home Purchase Assistance Act is endorsed on title, an extra white print must accompany the application, unless the Ministry of Lands, Parks and Housing agrees otherwise in writing. This extra print must contain the following endorsement:  
"The eligible residence as defined by the Home Purchase Assistance Act is located on lot \_\_\_ created by this plan.  
  
\_\_\_\_\_  
(B.C.L.S. or solicitor for the owner)
    - (c) Controlled access approval must be evident on the plan where parent property adjoins a highway that is designated as a controlled access highway.
    - (d) Where the plan refers to a covenant to be made under section 219, the instrument containing the covenant must be tendered with the plan.

**ASSIGNED PLAN NO.**  
**KAP 82885**



22/21

12 JAN 2007 14 58

LB005122

C-6520  
SHW

LAND TITLE ACT  
FORM C

(Section 233)

Province of British Columbia

GENERAL INSTRUMENT - PART 1

(This area for Land Title Office use)

Page 1 of 4 Pages

SUBMITTED BY  
KERSHAW KUROYAMA

1. **APPLICATION:** (Name, address, phone number and signature of applicant, applicant's solicitor or agent)  
 Lori Rossi, TELUS Communications Inc. - Rights of Way Department  
 1 - 15079 - 64 Ave, Surrey, BC V3S 1X9  
 Telephone: (604) 432-3928 CLIENT #10869  
 File: 28835-1

Lori Rossi, Agent

2. **PARCEL IDENTIFIER(S) AND LEGAL DESCRIPTION(S) OF LAND\***  
 (PID) (LEGAL DESCRIPTION)

STRATA LOT 57 SECTION 30 TOWNSHIP 26 ODYD STRATA PLAN KAS 003162

STRATA LOT 58 SECTION 30 TOWNSHIP 26 ODYD STRATA PLAN KAS 003162

3. **NATURE OF INTEREST\***

DESCRIPTION	DOCUMENT REFERENCE (PAGE AND PARAGRAPH)	PERSON ENTITLED TO INTEREST
-------------	--------------------------------------------	--------------------------------

Statutory Right of Way	Pages 3 - 4	Transferee
------------------------	-------------	------------

part on plan KAS

4. **TERMS:** Part 2 of this instrument consists of (select one only)
- |                                |                                                                |                            |                   |
|--------------------------------|----------------------------------------------------------------|----------------------------|-------------------|
| a) Filed Standard Charge Terms | <input type="checkbox"/> D.F. No.                              | 01 07/01/12 15:04:22 01 KL | 973112<br>\$65.20 |
| b) Express Charge Terms        | <input checked="" type="checkbox"/> Annexed as Part 2          |                            |                   |
| c) Release                     | <input type="checkbox"/> 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)\*** WESLAN DEVELOPMENTS INC. (Inc.#BC0675449)  
 and R 127 ENTERPRISES LTD. (Inc.#BC0384163) as to Sec. 219  
 Covenant and ROYAL BANK OF CANADA as to Priority Agreement

6. **TRANSFEEE(S):** name (s), occupation (s), postal address (es), postal code (s)

TELUS COMMUNICATIONS INC. (Extra Provincial No. A-55547)  
1 - 15079 - 64 Ave, Surrey, BC V3S 1X9

7. **ADDITIONAL OR MODIFIED TERMS:\***

N/A


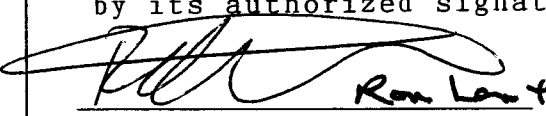
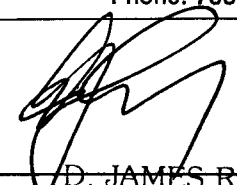
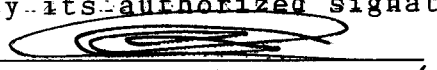

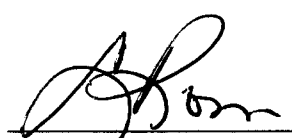
\* If space insufficient, enter "SEE SCHEDULE" and attach schedule in Form E

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

Pl. KAS 2.12

GENERAL INSTRUMENT – PART 1

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)
	Y	M	D	
 <b>TOM SMITHWICK, Q.C.</b> Porter Ramsay BARRISTERS and SOLICITORS #200 - 1465 Ellis Street Kelowna, BC V1Y 2A3 Phone: 763-7646	06	07	27	WESLAN DEVELOPMENTS INC. by its authorized signatory:  Ron Leathier
 <b>D. JAMES RAMSAY</b> BARRISTER & SOLICITOR #200 - 1465 Ellis Street Kelowna, BC V1Y 2A3 Phone: 763-7646	06	08	03	<del>R 127 ENTERPRISES LTD</del> <del>by its authorized signatory</del>  Tom Smithwick
 <b>MURIELLE GEDDERT</b> A Commissioner for taking Affidavits for British Columbia  Administrative Assistant Rights of Way Department TELUS Communications Inc. 1 - 15079 - 64 Ave. Surrey, BC V3S 1X9	06	06	19	TELUS COMMUNICATIONS INC. by its authorized Signatory  <b>LORI ROSSI, R.I. (B.C.)</b> MANAGER, RIGHTS OF WAY

OFFICER CERTIFICATION:

Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the Evidence Act, R.S.B.C 1996, c.124 to take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the Land Title Act as they pertain to the execution of this instrument.

- \* If space insufficient, enter "SEE SCHEDULE" and attach schedule in Form E
- \*\* If space insufficient, continue execution on additional page(s) in Form D

### Terms of Instrument – Part 2

WHEREAS the Owner (as identified in Form C Part 1 Item 5) is the registered owner of the Lands (as identified in Form C Part 1 Item 2) and has agreed to grant TELUS Communications Inc. ("TELUS") (as identified in Form C Part 1 Item 6) a statutory right of way which is necessary for the operation and maintenance of TELUS' undertaking,

NOW THEREFORE in consideration of the terms and conditions set out below, the Owner and TELUS agree as follows:

1. **STATUTORY RIGHT OF WAY** The Owner grants to TELUS, its successors and assigns a statutory right of way upon the Lands to:
  - a) place, operate, maintain and remove on, under and over the Lands one or more poles, pole mounted devices, anchoring mechanisms, guy wires, cables for telecommunications, data transmission, power and grounding, underground ducts, above and below ground equipment enclosures, rooms, buildings, shelters, fences, antennas, support structures, access roadways, if necessary, and related works (the "Works");
  - b) remove trees or obstructions which might interfere with or create a danger to persons or the Works;
  - c) enter on foot and by vehicle, with or without machinery and equipment, for the purpose of access to and egress from the Works; and
  - d) generally to do all acts and work necessary and incidental to the foregoing or the business of TELUS, its successors and assigns.
2. **TERM** This Agreement shall continue in perpetuity from the date this Agreement is executed by the Owner and TELUS.
3. **AREA RESTRICTION** TELUS shall restrict its exercise of the rights set out in Section 1(a) to that area of the Lands (the "Right of Way Area") shown in bold on plan number KAP 82886 deposited at the Land Title Office and referenced on the Form C, item 3, unless the Owner permits otherwise. A copy of the survey shall be provided to the Owner upon registration of the survey at the appropriate Land Title Office.
4. **FEES** TELUS shall, upon receipt of a satisfactory post-index search disclosing that in the normal course of Land Title Office practice this Agreement shall be registered against title to the Lands, pay the Owner a lump sum fee in the amount of one (\$1.00) dollar.
5. **STRATA CONVERSION** If the Lands are subdivided by strata plan and the works are located within the common areas shown on the strata plan, TELUS shall, after receipt of a signed agreement from the appropriate strata corporation agreeing to be bound by this Agreement, discharge this Agreement from the strata lots shown on the strata plan but not from the common areas.
6. **CONSTRUCTION** TELUS shall at its sole expense place, operate, maintain and remove the Works in compliance with all applicable laws. The Works shall at all times remain the property of TELUS and shall not be considered a fixture notwithstanding any rule of law or equity to the contrary.
7. **NON-INTERFERENCE** The Owner shall not do or permit to be done any act or thing, which may, as reasonably determined by TELUS, damage the Works and or interfere with any rights granted to TELUS by this Agreement.
8. **INDEMNITY** TELUS shall indemnify and save harmless and forever discharge the Owner from and against all manner of actions, causes of actions, claims, debts, suits, damages, demands and promises, at law or in equity whether known or unknown, including without limitation for injury to persons or

property including death, of any person directly or indirectly arising from, or attributable to, any act, omission, negligence or default of TELUS in connection with or in consequence of this Agreement, save and except to the extent caused by any act, omission, negligence or default of the Owner. Notwithstanding any other provision of this Agreement, in no event shall TELUS be liable for any special, indirect, consequential or incidental damages from any cause whatsoever (even if it has been advised of the possibility thereof), including without limitation, lost profits, lost revenues, failure to realize expected savings or other commercial or economic losses of any kind.

9. **DISCHARGE** TELUS may, as to all or any part of the Lands, discharge, in whole or in part, any rights granted to TELUS by this Agreement. TELUS may, at any time, abandon all or part of the Works without affecting the rights granted to TELUS by this Agreement.
10. **NOTICE** Any notice required to be given hereunder shall be valid if in writing and delivered or telecopied at the address set out above or at such other address as may be designated in writing by either party and any such notice shall be effective when received.
11. **LICENCE** TELUS may grant licences to its Affiliates and or others to occupy and use the Works and or the Right of Way Area. For purposes of this Agreement, Affiliate means, as regards TELUS, an affiliated body corporate as defined in the Canada Business Corporations Act, as well as any partnership or other unincorporated association in which TELUS Corporation or any of its affiliated bodies corporate (as so defined) has a controlling interest.
12. **WAIVER** No waiver or amendment of any provision of this Agreement shall be effective or deemed by a course of conduct, unless such waiver or amendment is in writing signed by the Owner and TELUS and stating specifically that it is intended to amend this Agreement.
13. **SEVERABILITY** If any provision of this Agreement is declared invalid or unenforceable by competent authority, such provision shall be deemed severed and shall not affect the validity or enforceability of the remaining provisions of this Agreement, unless such invalidity or unenforceability renders the operation of this Agreement impossible.
14. **BINDING EFFECT** This Agreement will be registered at the Land Title Office and shall be binding upon and enure to the benefit of the Owner and TELUS and their respective heirs, executors, administrators, successors and assigns and shall run with the Lands, and with each part into which the Lands may at any time be subdivided and each parcel into which the Lands or any portion thereof may at any time be consolidated. By executing the Form C Part 1 Item 8, the Owner and TELUS agree to be bound by this Agreement.
15. **THIS** Agreement runs with the Lands. Notwithstanding anything contained in this Agreement to the contrary, neither the Owner nor any future owner of the Lands or any portion of the Lands shall be liable under any of the covenants and agreements contained herein where such liability arises by reason of an act or omission occurring after the Owner named herein or any future owner ceases to have a further interest in the Lands.
16. **THIS** Agreement and the provisions thereof are subject to the provisions (including regulations) of the *Telecommunications Act* S. C. 1993, c.38 and the *Canadian Radio-Television and Telecommunications Commission Act* R.S.C. 1985, c.C-22 and their successor legislation, as well as any rulings, regulations, tariffs or other directives of the Canadian Radio-Television and Telecommunications Commission.

END OF DOCUMENT

File: 10500-30-610  
Surveyor's File: 11575-SRW3  
Neil Denby, B.C.L.S.

*LAND TITLE ACT*

Section 69

ORDER

I, Rick Hargraves, Surveyor General of the Province of British Columbia, do hereby consent, pursuant to the provisions of section 69 of the *Land Title Act*, Chapter 250, R. S. 1996, to the reference plan of statutory right of way over part of Strata Lots 57 and 58, Strata Plan K903162, Section 30, Township 26, Osoyoos Division of Yale District, in the following manner and subject to the following conditions:

- (a) Instead of requiring a post or a monument to be placed at each angle of each of the new parcels into which the area is to be subdivided, the surveyor making the survey shall reference certain angles in the road boundaries by monuments of type 1 or type 2 as defined in the General Survey Instruction Rules regarding permanent survey monuments at an approved density.
- (b) The plan of such survey shall in all other respects conform with the provisions of the *Land Title Act* and, before deposit, thereunder, shall be approved by me. The plan shall show evidence that the subdivider agrees to abide by all the provisions of this order.
- (c) Not later than one year from the date of the completion of the block outline survey, or within such further time as I may upon application made within said one year, allow, the surveyor initiating the block outline survey shall post each angle of each parcel created by said survey in accordance with the provisions of the *Land Title Act* survey and the General Survey Instruction Rules.
- (d) A plan of the posting required by Clause (c) made in all respects to comply with the survey and plan drafting provisions of the *Land Title Act* shall upon approval by me, be tendered for deposit by the subdivider in the Land Title Office in Kamloops, British Columbia.
- (e) The Registrar, shall, upon the deposit of the posting plan, make reference to its deposit upon the plan referred to in clause (b) hereof, and, thereupon the two plans shall thenceforth for all purposes be deemed complementary and be read as one plan of the survey.
- (f) This order shall accompany the deposit of the plan referred to in clause (b) hereof and the Registrar shall make an appropriate reference to this order on that plan.

IN WITNESS WHEREOF, I have hereto set my hand at Victoria, British Columbia, this 13th day of December, 2006.



Jeff Beddoes, B.C.L.S., C.L.S.  
for Surveyor General

*SLA*  
**LAND TITLE ACT**

*No NUMBER  
PLAN 54*

FORM 11(a)  
(Section 99(1)(e), (j), and (k))

**APPLICATION FOR DEPOSIT OF REFERENCE OR EXPLANATORY PLAN (CHARGE)**

I, Tom Smithwick, Q.C., Barrister and Solicitor, of 200-1465 Ellis Street, in the City of Kelowna, in the Province of British Columbia V1Y 2A3, on behalf of Telus Communications Inc. of #1 – 15079 – 64 Avenue, Surrey, BC V3S 1X9 apply to deposit reference/explanatory plan of:

PID: nil

Strata Lots 57 and 58, Sec. 30, Tp. 26, ODYD, Strata Plan KAS **003162**

I enclose:

- 1. The reference/explanatory plan.
- 2. The reproductions of the plan required by section 67(u).
- 3. Fees of \$54.00 .

01 07/01/12 15:04:29 01 KL  
S/S/OT PLANS

973112  
\$54.00

DATED this 28<sup>th</sup> day of December, 2006.



TOM SMITHWICK, Q.C.  
Telephone: 763-7646

- NOTE:**
- (i) Under section 67(s) the following reproductions of the plan must accompany this application:
    - (a) One blue linen original (alternatively, white linen or original transparencies).
    - (b) One duplicate transparency.
    - (c) One whiteprint is required as a worksheet for the Land Title Office.
  - (ii) The following further requirements may be necessary:
    - (a) If the parent property is in an Agricultural Land reserve, a release is required unless the parent property is less than 2 acres (app. 0.8094 hectare) or where, for permitted uses, an approving officer has signed the plan under section 1(1)(a) and (b) of the Subdivision and Land Use Regulations (B.C. Reg. 7/81) under the Agricultural Land Commission Act.
    - (b) Where a notice respecting a grant under the Home Purchase Assistance Act is endorsed on title, an extra white print must accompany the application, unless the Ministry of Lands, Parks and Housing agrees otherwise in writing. This extra print must contain the following endorsement:  
"The eligible residence as defined by the Home Purchase Assistance Act is located on lot \_\_\_  
\_\_\_ created by this plan.  
  
(B.C.L.S. or solicitor for the owner)
    - (c) Controlled access approval must be evident on the plan where parent property adjoins a highway that is designated as a controlled access highway.
    - (d) Where the plan refers to a covenant to be made under section 219, the instrument containing the covenant must be tendered with the plan.

**ASSIGNED PLAN NO.**  
**KAP 82886**

1/3

-1 FEB 2007 09 25

LB012455

C-65.20  
SES

SUBMITTED BY  
KERSHAW KUROYAMA

LAND TITLE ACT

FORM 35  
(section 216(1))

01 07/02/01 09:31:43 01 KL 976166  
CHARGE \$65.20

**DECLARATION OF BUILDING SCHEME**

NATURE OF INTEREST: CHARGE: BUILDING SCHEME  
HEREWITH FEE OF: \$65.20.

Address of person or corporation entitled to apply to register this building scheme:  
WESLAN DEVELOPMENTS INC. (Inc. BC0675449) of 11<sup>th</sup> Floor 938 Howe Street,  
Vancouver, BC V6Z 1N9 and R 127 ENTERPRISES LTD. (Inc. BC0384163) of #14 -  
1020 Lanfranco Road, Kelowna, BC V1W 3W6

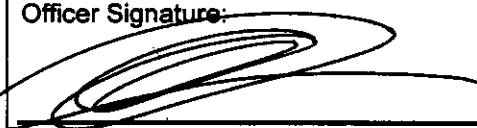


Full name, address, and telephone number of person presenting application:  
Porter Ramsay, Barristers & Solicitors, 200 - 1465 Ellis Street, Kelowna BC, V1Y 2A3

SIGNATURE OF APPLICANT, OR SOLICITOR OR  
AUTHORIZED AGENT

We, Ron Lauthier +  
+ Geby Wager authorized signatory of Weslan Developments Inc  
and R127 Enterprises Ltd.

HEREBY DECLARE THAT:

1. WESLAN DEVELOPMENTS INC. and R 127 ENTERPRISES LTD., are registered owners, in fee simple, of the following land (hereinafter called "the Lots")  
PID: ~~No PIDs~~ Lots 1 to 63 inclusive, Section 30, Township 26, ODYD, Strata Plan 75 ~~RAS~~; SEE SCHEDULE
2. I hereby create a building scheme relating to the Lots.
3. A sale of the Lots is subject to the restrictions enumerated in Schedule "A" annexed or attached hereto.
4. The restrictions shall be for the benefit of all the lots.

<p>EXECUTION(S) Officer Signature:  <b>TOM SMITHWICK, Q.C.</b> Porter Ramsay BARRISTERS and SOLICITORS #200 - 1465 Ellis Street Kelowna, BC V1Y 2A3 Phone: 763-7646 (as to all signatures)</p>	<p>EXECUTION DATE: Y/M/D 2006/07/27</p>	<p>WESLAN DEVELOPMENTS INC. by its authorized signatory:  Print Name: <u>Ron Lauthier</u> R 127 ENTERPRISES LTD. by its authorized signatory:  Print Name: <u>GEBY WAGER</u></p>
-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

OFFICER CERTIFICATION: Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the Evidence Act, R.S.B.C. 1996, c. 124, to take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the Land Title Act as they pertain to the execution of the instrument.

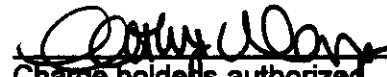
**CONSENT AND PRIORITY AGREEMENT OF CHARGE HOLDERS:**

ROYAL BANK OF CANADA, the holder of the following charges, consents to the registration of the above Declaration of Building Scheme and agrees that it shall have priority over our charges.

EXECUTIONS(S):

  
Officer Signature

06/07/31  
Execution Date  
Y/M/D

  
Charge holder's authorized  
Signatory as to Mortgage  
KX100112 and Assignment  
of Rents KX100113

Cathy Wong  
Account Manager

**Susan Jean Tanatmis**  
A Commissioner for Taking Affidavits for  
British Columbia  
36th Floor, 1055 West Georgia Street  
Vancouver, B.C., V6E 3S5



**Roger Sangerfloo**  
Sr. Account Manager

OFFICER CERTIFICATION:

Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the *Evidence Act*, R.S.B.C. 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 the instrument.

NOTE:

1. The Consent and grant of priority of charge holders may be in separate counterparts of Form 35.
2. The execution of all declaring or consenting parties must be witnessed in accordance with Part 5 of the *Land Title Act*.
3. The type and registration number of the charge must be typed or printed immediately below the signature of the owner of the charge.



## Schedule

PID	Legal Description
026-949-571	Strata Lot 1, Sec. 30, Tp. 26, ODYD, Strata Plan KAS3162
026-949-580	Strata Lot 2, Sec. 30, Tp. 26, ODYD, Strata Plan KAS3162
026-949-598	Strata Lot 3, Sec. 30, Tp. 26, ODYD, Strata Plan KAS3162
026-949-601	Strata Lot 4, Sec. 30, Tp. 26, ODYD, Strata Plan KAS3162
026-949-610	Strata Lot 5, Sec. 30, Tp. 26, ODYD, Strata Plan KAS3162
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026-949-636	Strata Lot 7, Sec. 30, Tp. 26, ODYD, Strata Plan KAS3162
026-949-644	Strata Lot 8, Sec. 30, Tp. 26, ODYD, Strata Plan KAS3162
026-949-652	Strata Lot 9, Sec. 30, Tp. 26, ODYD, Strata Plan KAS3162
026-949-661	Strata Lot 10, Sec. 30, Tp. 26, ODYD, Strata Plan KAS3162
026-949-679	Strata Lot 11, Sec. 30, Tp. 26, ODYD, Strata Plan KAS3162
026-949-687	Strata Lot 12, Sec. 30, Tp. 26, ODYD Strata Plan KAS3162
026-949-695	Strata Lot 13, Sec. 30, Tp. 26, ODYD Strata Plan KAS3162
026-949-709	Strata Lot 14, Sec. 30, Tp. 26, ODYD Strata Plan KAS3162
026-949-717	Strata Lot 15, Sec. 30, Tp. 26, ODYD Strata Plan KAS3162
026-949-725	Strata Lot 16, Sec. 30, Tp. 26, ODYD Strata Plan KAS3162
026-949-733	Strata Lot 17, Sec. 30, Tp. 26, ODYD Strata Plan KAS3162
026-949-741	Strata Lot 18, Sec. 30, Tp. 26, ODYD Strata Plan KAS3162
026-949-750	Strata Lot 19, Sec. 30, Tp. 26, ODYD Strata Plan KAS3162
026-949-768	Strata Lot 20, Sec. 30, Tp. 26, ODYD Strata Plan KAS3162
026-949-776	Strata Lot 21, Sec. 30, Tp. 26, ODYD Strata Plan KAS3162
026-949-784	Strata Lot 22, Sec. 30, Tp. 26, ODYD Strata Plan KAS3162
026-949-792	Strata Lot 23, Sec. 30, Tp. 26, ODYD Strata Plan KAS3162
026-949-806	Strata Lot 24, Sec. 30, Tp. 26, ODYD Strata Plan KAS3162
026-949-814	Strata Lot 25, Sec. 30, Tp. 26, ODYD Strata Plan KAS3162
026-949-822	Strata Lot 26, Sec. 30, Tp. 26, ODYD Strata Plan KAS3162
026-949-831	Strata Lot 27, Sec. 30, Tp. 26, ODYD Strata Plan KAS3162
026-949-849	Strata Lot 28, Sec. 30, Tp. 26, ODYD Strata Plan KAS3162
026-949-857	Strata Lot 29, Sec. 30, Tp. 26, ODYD Strata Plan KAS3162
026-949-865	Strata Lot 30, Sec. 30, Tp. 26, ODYD Strata Plan KAS3162
026-949-873	Strata Lot 31, Sec. 30, Tp. 26, ODYD Strata Plan KAS3162
026-949-881	Strata Lot 32, Sec. 30, Tp. 26, ODYD Strata Plan KAS3162
026-949-890	Strata Lot 33, Sec. 30, Tp. 26, ODYD Strata Plan KAS3162
026-949-903	Strata Lot 34, Sec. 30, Tp. 26, ODYD Strata Plan KAS3162
026-949-911	Strata Lot 35, Sec. 30, Tp. 26, ODYD Strata Plan KAS3162
026-949-920	Strata Lot 36, Sec. 30, Tp. 26, ODYD Strata Plan KAS3162
026-949-938	Strata Lot 37, Sec. 30, Tp. 26, ODYD Strata Plan KAS3162
026-949-946	Strata Lot 38, Sec. 30, Tp. 26, ODYD Strata Plan KAS3162
026-949-954	Strata Lot 39, Sec. 30, Tp. 26, ODYD Strata Plan KAS3162
026-949-962	Strata Lot 40, Sec. 30, Tp. 26, ODYD Strata Plan KAS3162

026-949-971	Strata Lot 41, Sec. 30, Tp. 26, ODYD Strata Plan KAS3162
026-949-989	Strata Lot 42, Sec. 30, Tp. 26, ODYD Strata Plan KAS3162
026-949-997	Strata Lot 43, Sec. 30, Tp. 26, ODYD Strata Plan KAS3162
026-950-006	Strata Lot 44, Sec. 30, Tp. 26, ODYD Strata Plan KAS3162
026-950-014	Strata Lot 45, Sec. 30, Tp. 26, ODYD Strata Plan KAS3162
026-950-022	Strata Lot 46, Sec. 30, Tp. 26, ODYD Strata Plan KAS3162
026-950-031	Strata Lot 47, Sec. 30, Tp. 26, ODYD Strata Plan KAS3162
026-950-049	Strata Lot 48, Sec. 30, Tp. 26, ODYD Strata Plan KAS3162
026-950-057	Strata Lot 49, Sec. 30, Tp. 26, ODYD Strata Plan KAS3162
026-950-065	Strata Lot 50, Sec. 30, Tp. 26, ODYD Strata Plan KAS3162
026-950-073	Strata Lot 51, Sec. 30, Tp. 26, ODYD Strata Plan KAS3162
026-950-081	Strata Lot 52, Sec. 30, Tp. 26, ODYD Strata Plan KAS3162
026-950-090	Strata Lot 53, Sec. 30, Tp. 26, ODYD Strata Plan KAS3162
026-950-103	Strata Lot 54, Sec. 30, Tp. 26, ODYD Strata Plan KAS3162
026-950-111	Strata Lot 55, Sec. 30, Tp. 26, ODYD Strata Plan KAS3162
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026-950-138	Strata Lot 57, Sec. 30, Tp. 26, ODYD Strata Plan KAS3162
026-950-146	Strata Lot 58, Sec. 30, Tp. 26, ODYD Strata Plan KAS3162
026-950-154	Strata Lot 59, Sec. 30, Tp. 26, ODYD Strata Plan KAS3162
026-950-162	Strata Lot 60, Sec. 30, Tp. 26, ODYD Strata Plan KAS3162
026-950-171	Strata Lot 61, Sec. 30, Tp. 26, ODYD Strata Plan KAS3162
026-950-189	Strata Lot 62, Sec. 30, Tp. 26, ODYD Strata Plan KAS3162
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**HIGHPOINTE**

**BUILDING SCHEME**

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## 1.0 BUILDING SCHEME CONTROL, DESIGN AND OTHER CONSULTANTS, AND FEES

### 1.1 Building Scheme Control and Management

During the period (the "Transition Period") ending December 1, 2011 (the "Turnover Date"), or such earlier Turnover Date as Weslan Developments Inc. (the "Developer") shall determine in its discretion, the Developer has full authority for the implementation, application, interpretation and enforcement of the Building Scheme. For greater certainty and without limiting the generality of the foregoing, such authority includes the selection and management of the Architectural Review Consultant (the "ARC") and the Landscape Review Consultant (the "LRC"). Therefore, until the Turnover Date but subject as otherwise provided in the paragraph immediately below, the Highpointe Strata Corporation will have no authority regarding or involvement in the oversight or management of any aspect of the Building Scheme, nor shall the Highpointe Strata Corporation be entitled to require compliance with any provision of the Building Scheme which, as provided in section 1.2 below, the ARC or the LRC, as the case may be, may approve variance therefrom or non-compliance therewith.

Notwithstanding the foregoing, at any time during the Transition Period the Developer in its discretion may but shall not be obligated to delegate to the Highpointe Strata Corporation responsibility to oversee, implement and apply any such particular provision of the Building Scheme as the Developer may determine; provided, however, that any such delegation to the Highpointe Strata Corporation shall not in any way diminish or negate the Developer's authority provided in the immediately preceding paragraph. In each instance of delegation to it of responsibility as aforesaid, the Highpointe Strata Corporation shall thereupon immediately accept such responsibility and perform the duties pertaining to and arising from such responsibility.

With the prior approval of the shareholders (being the lot owners) of the Highpointe Strata Corporation given by special resolution passed by a two-thirds majority vote either at a duly constituted meeting of such shareholders (at which meeting the required quorum shall be those owners who vote in person or by proxy) or in writing, the Developer will have the authority to change any provision of the Building Scheme at any time that the Developer shall have the authority provided in the first paragraph above.

On the Turnover Date, the Highpointe Strata Corporation shall accept and assume full authority for the implementation, application, interpretation and enforcement of the Building Scheme.

The Developer has the full discretion in its interpretation of all aspects of the Highpointe Building Scheme. While the Developer may enforce all the provisions of the Highpointe Building Scheme, nothing contained in the Building Scheme should be interpreted so as to impose any requirement on the Developer to enforce any provisions which it chooses, in its sole discretion, not to enforce. The Developer will have no liability to any Highpointe lot owner for any decisions made or neglected to be made in regard to this Building Scheme.

### 1.2 Architectural and Landscape Review Consultants

The Developer has appointed **Mr. John Macdonald**, of Kelowna, as the ARC for the Development, and **Site 360 Group Inc.** as the Development's LRC. The ARC and LRC are responsible for reviewing all house and yard plans submitted by Highpointe lot owners to ensure that the criteria set forth in this Highpointe Building Scheme have been met.

### 1.3 Other Approved Consultants

So as to assist in ensuring that the entire design review process goes as smoothly as possible for the lot owner, and to help maintain the highest quality in design and construction at Highpointe, the Developer has pre-qualified a select number of house builders (the "Approved Builders") and house designers and landscape designers (the "Recommended Designers"). Some of these landscape designers also act as landscape contractors.

Unless there are major extenuating circumstances acceptable to the Developer, each lot owner will be required to use one of the Approved Builders to construct his/her home at Highpointe. In addition, each lot owner is strongly encouraged to utilize one of the Recommended Designers to design his/her home, design his/her landscaping and oversee the construction of the landscaping.

Each of the Approved Builders and Recommended Designers has been selected for his/her excellent reputation and professionalism. Each is familiar with the Highpointe project, this Building Scheme and the Developer's high expectation for design and construction. Use of these pre-qualified consultants should assist in minimizing the time required to be devoted to the design and construction process by each lot owner, and should help ensure a high level of satisfaction with the finished product.

A current listing of the Approved Builders and Recommended Designers is available to each lot owner upon request.

## 2.0 HOUSE AND LANDSCAPE PLANS – REVIEW AND INSPECTION PROCESS

After review of the Highpointe Building Scheme, each lot owner should interview and then select one of the Approved Builders, Recommended House Designers and Recommended Landscape Designers from the available list. Once they are selected, the lot owner should work with his/her Recommended Designers and Approved Builder in order to decide upon, prepare and send to the ARC a preliminary package of information on his/her proposed design.

Prior to the preparation of this preliminary package, each lot owner is strongly encouraged to set up a pre-design meeting with the ARC in order to establish a clear understanding of the key provisions of this Building Scheme.

The following should be provided in the preliminary package:

- a) A lot owner registration form, available from the ARC. This form supplies the ARC with the lot owner's and all consultants' names and pertinent contract information to expedite the design review process;
- b) A plan of the subject lot, showing property lines and dimensions, existing one metre contours, non-disturbance and house/pool foundation setback lines, if any, rights-of-way and easements, if any, and the stipulated building envelope;
- c) Proposed location of your house and driveway, superimposed on the lot plan. The house siting must be within Highpointe's stipulated building envelope for your lot;
- d) Elevation drawings or picture of your chosen design. Grade elevations and site sections are also to be included in this preliminary submission, along with at least two representative cross sections that illustrate the plan's response to slopes on site and in context of grades of adjacent lots; and
- e) The approximate dimensions of the basement, first and second floor of your house, including its garage.

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The purpose of this preliminary submission will be for the ARC to review each lot owner's chosen building design so as to ensure that the owner is headed in the right direction. The ARC will respond to the owner on this submission within several days. Through this informal process at the front end, expensive and time-consuming design work can be properly focused and detailed work on unacceptable designs can be avoided.

Once the lot owner is confident that his/her overall design concept should be acceptable to the ARC, he/she should complete all of the design plans described in section 8 herein for submission to the ARC and the LRC, both of whom will provide a formal response to the lot owner's submission no later than ten business days from its receipt. If additional submissions by the lot owner are required, the ARC and the LRC will respond within six business days. Please be advised however that the ARC does not issue your building permit and does not review your plans for compliance with the City of Kelowna and provincial building codes.

The lot owner's builder should not submit the building and landscape plans to the City of Kelowna for building permit approval until they have been fully approved by the ARC and LRC. No material changes to the plans approved by the ARC and the LRC affecting the exterior appearance of the house or the yard shall be made without further approval by the ARC and/or LRC.

The review process will also involve inspections by the ARC and LRC of the house and landscape construction to ensure compliance with the approved plans. These will typically occur at the house framing stage, at completion of construction of the house and at completion of construction of the landscaping.

### **3.0 KEY DESIGN CONSIDERATIONS**

#### **3.1 House Location/ Excavation**

The main house, including garages, porches and decks (but not non-enclosed, at grade patios) must be positioned within each lot's prescribed building envelope. House positioning is measured to the external walls of the house. As a result, roof eaves may project outside of the building envelope. In addition, decks which are located solely on that one side of the building envelope opposite each lot's access road or access lane, may also project outside of the building envelope. The location of each lot's driveway, as it enters the lot from the access street or shared laneway, must also conform to the Developer's mandated positioning.

Excavations for houses and swimming pools on the following lots must be designed or approved, and certified by a geotechnical consulting firm selected by the Developer: Lots 6, 7, 15 to 20 inclusive, 31, 32, 33, 43 and 52 to 57 inclusive.

#### **3.2 Lot Grading and Drainage**

Houses are to be designed to conform to existing lot grade conditions. Extensive cutting, filling and recontouring of building sites and yard areas will not be acceptable except in extreme circumstances. All grading shall present a finished appearance with rounded slope transitions.

The lot grading design shall ensure that:

- No onsite surface water is directed onto neighbouring lots.
- No onsite surface water is directed into the Non Disturbance areas of the site.

There are two sources of onsite surface water, namely roof drainage and ground surface drainage.

Roof drainage shall be disposed of in the following manner.

- i) Into the lot stormwater service connection (where the lot is serviced with a stormwater service connection).
- ii) Into an inground rock pit (where the lot is not serviced with a stormwater service connection), such rock pit to be located and sized by a qualified geotechnical engineer approved by the Developer or Highpointe Strata Corporation (such as EBA Engineering Consultants Ltd.).

Collected ground surface drainage shall be disposed into lawn basin/rock pits and/or passive stormwater disposal areas (e.g. vegetated swale).

### 3.3 House Size and Height

Excluding basement and garage, houses with a total floor area of less than 1,800 square feet (167 square metres) in the case of a single level house or 2,300 square feet (214 square metres) in the case of all other design styles (two storey, one and one-half storey, split level) are strongly discouraged and are subject to the approval of the ARC.

House heights are limited to those restrictions contained in the City of Kelowna bylaws pertaining to Highpointe's RUI zoning classification.

### 3.4 Lot Development Parameters

Each lot within Highpointe may be used only for residential purposes, meaning the construction of one single family house with a small, compatible ancillary building on each lot. No trailer, mobile home, modular home or prefabricated house is permitted on any lots other than a temporary construction trailer during the house construction period.

### 3.5 Preferred Architectural Styles

The building forms at Highpointe should reflect the hillside setting, complement the natural character of the site and give a feeling of "casual elegance." Although there is no specific architectural style required at Highpointe, the following comments should guide the design process.

Generally, horizontal lines that follow the contours of the site will appear natural and consistent with the surroundings. Low pitched gable or hip roofs and even flat roof forms will best complement the setting and give the correct "low slung" appearance to the building.

Informal plan forms that step with the site can best offer the direct indoor/outdoor access to ground level outdoor spaces that are common and attractive for hillside sites. Outdoor "rooms" should be encouraged by the use of loggias, covered porch and veranda type elements. Built-in seating, outdoor fireplaces and water amenities such as courtyard fountains will all add to the ambience of these outdoor settings.

An emphasis on natural materials and colours will help the building forms blend into the natural setting. Large areas of glass to take in the view, along with overhangs, awnings, louvers and other measures to shade from the sun will assist in defining the style. Several identifiable architectural styles are appropriate to Highpointe's hillside setting.

First the "Prairie Style," made popular by Frank Lloyd Wright, along with certain aspects of the "craftsman" tradition reflect a traditional North American approach. A more modern version can be found in the West Coast contemporary style. Finally the European hillside forms of Italy, France and Spain, along with various English Country styles offer a more historic solution.



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Other design forms consistent with Highpointe's natural hillside setting will also be appropriate. However, certain housing styles which will be discouraged at Highpointe can generally be described as Log, Chalet, Rustic and Minimalist Box.

To assist in describing some of the design elements considered most appropriate for Highpointe, the Developer has prepared some architectural character presentation boards. These presentation boards will be available for viewing at the Highpointe sales centre and subsequently through the office of Highpointe's ARC.

No houses in Highpointe will be permitted to closely resemble the design of any other previously approved houses in the community.

### 3.6 Side and Rear Elevations Design

Special attention to the architectural treatment of the side and rear elevations is to be given where a house backs onto or fronts another lot or common areas such as roads or lanes. Continuation of the architectural style around to and including the rear elevation is essential, especially on homes with walkouts visible from below. This includes the treatment of rooflines, walls, projections, window placement, and the selection and colour of materials.

### 3.7 Conformity to Restrictive Covenants

All house and landscape designs must be in conformity with all restrictive covenants which will be registered on title to some or all of Highpointe's lots. The provisions of all such restrictive covenants supersede and take precedence over any requirement set out in this Highpointe Building Scheme. The restrictive covenants are described in the Disclosure Statement, as amended, for Highpointe. Additional information on such covenants can be obtained from the Developer upon request.

## 4.0 EXTERIOR HOUSE DESIGN FEATURES

### 4.1 Ancillary Buildings

Each lot owner will be permitted to erect, in addition to the main house, one additional small building to be used for pool equipment, garden and tool storage and similar residential uses. Any such ancillary building, regardless of when it is built, is subject to the same design parameters set out in this Building Scheme governing house design. Its materials and colour must be complementary to the main house.

### 4.2 Exterior Materials

No exterior wall materials other than pre-stained narrow or medium width horizontal bevel cedar siding, pre-finished large-batten cedar board and batten, pre-finished narrow width horizontal *Hardi-Plank*, pre-stained flat bottom cedar shingles, smooth, painted acrylic or rough stucco (not swirled, stippled or trowel textured), wainscotting, brick, stone, and combinations thereof are permitted. A minimum of three exterior cladding materials should be used on each structure. The ARC may permit less than three if the form and style of the design is tasteful and attractive.

No log, vinyl, steel or aluminium siding or jumbo sized concrete brick of any kind are permitted.

Exposed concrete foundations must be limited to a height of 18 inches (46 centimetres) above the finished grade, except for steeply sloping sites where in some cases the ARC may permit slightly greater exposures.

#### 4.3 Accent Materials

No synthetic stone or brick shall be used unless it is a high quality simulated stone or brick that has consistent colour and material consistency throughout, so that it maintains its beauty despite abrasion or impact damage.

No brick and/or stone shall be used on any wall or column unless its use commences at finished grade.

#### 4.4 House Colours

Exterior colours for all walls and roofs should harmonize with the landscape of the site and neighbouring houses. Warm earth tones in paint or stain are encouraged. Bright or dramatic colours may be used to accent or highlight building features in a subtle manner, but should not be applied to the majority of the house exterior. No wood or stucco surfaces shall remain unpainted or unstained.

#### 4.5 Roofing

Roof materials should be consistent with the architectural character of the house design. Roof materials should be non-combustible and are limited to *Uni-Crete* tile, clay tile or slate. Roof pitches should generally range between 4:12 and 8:12. No roof shall contain radical shed-like monoplane slopes or uninteresting roof shapes. Rather, the roof configurations must be positioned at staggered heights and should not sit inappropriately and unnecessarily tall. Roof designs consisting of a mixture of cottage and gable elements are encouraged. The occasional appropriately-sized flat, low-slope or curved roofed portion will also be considered. Wide overhanging eaves, long roof ridge lines and hipped roofs with projecting clerestory structures are encouraged.

#### 4.6 Skylights

No skylights shall be other than flat glass, and shall not project more than 12 inches (30.5 centimetres) above the roof surface.

No skylights shall be visible from the street except when the skylight is located at the main ridge and is shaped in a fashion which complements the house in general and the roof mass in particular.

#### 4.7 Eaves and Gutters

No shallow roof overhangs are permitted; rather they are to be a minimum of 2.5 feet (0.76 metres) to a maximum of 4 feet (1.22 metres) deep on the main floor and 3 feet (0.91 metres) deep on the upper floor.

No fascia gutter shall be permitted, but rather a surface-mounted gutter design is to be used. Not plain but only decorative aluminium or copper gutters are permitted, complete with decorative scuppers, downspouts and ornamental splash pads. Hidden or concealed roof gutters are encouraged.

Should built-in gutters be used, they must be layered and configured in such a way as to enhance the overhang, complementing the design of the house.

#### 4.8 Doors and Windows

Windows permitted at Highpointe are restricted to high quality, pre-finished wood or metal clad wood windows. The following window manufacturers are approved by the ARC: *Pella, Kolbe & Kolbe, All Weather, Guildcraft, Dynamic, Loewen, Geinow, CWD, Marvin, and Anderson*. PVC framed windows are not permitted with the exception of casement & awning windows manufactured by *Euroline* and *Vinyltek* or equivalent. On some of the panoramic view lots, structural aluminium framed curtain wall window systems may be permitted.

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Sliding patio doors are discouraged, while swing terrace or French doors are encouraged. No exterior window shall be without balanced sash and if using high top divided-light muntin bars they must be true divided or designer divided. The use of thin internal bars is not permitted. The use of stained glass is generally discouraged, however if the design is subtle, it may be permitted in certain cases.

No single front door shall be less than 3.50 feet (1.07 metres) wide and no double front door shall be less than 6 feet (1.83 metres) wide.

#### 4.9 Patios and Decks

Patios are to be constructed of concrete with a high quality exposed aggregate finish, stamped concrete, brick pavers, paving stones, stone or porcelain ceramic tiles. If an above ground slat deck is required, a composite decking material may be used but treated wood or cedar is discouraged unless covered by a portico to give protection from the weather. *Duradeck* or *Weatherdeck* vinyl deck membranes are not permitted. Deck walls and railings should be constructed of materials consistent with those used on the exterior of the deck itself, and may include plate glass with natural stone, brick or decorative iron columns. Planters and other edge details located around the perimeter of decks and patios are encouraged.

Decks should be designed to be an integral part of the home. Deck and railing materials and colours should be compatible with the house design finish. All protective barriers on front porches should utilize spindles (square or turned according to house style), or pony-walls finished with the same exterior material that adorns the majority of the house.

No deck supports shall be permitted which appear to be inadequately sized and do not complement the design of the house.

#### 4.10 Chimneys

No chimney on any elevation shall be without an appropriately sized chase box, a collar and a painted, stainless steel or copper hood. No exterior wall chimney shall be cantilevered. No fireplace horizontal direct vent shall be visible from the street.

#### 4.11 Garages

No garage shall accommodate less than two cars side-by-side. Garage doors should not exceed 9 feet (2.74 metres) in height. However, so as to accommodate a recreational vehicle, a single garage door may be up to 12 feet (3.66 metres) in height, provided that the door is not readily visible from any roadways or neighbouring houses.

Garages should not be the prominent element of the front façade of the house and should be oriented accordingly. Garages are encouraged to be set back from the front plane of the home and where practical, positioned perpendicular to the home, so that the doors do not directly face the street.

### 5.0 **YARD AND LANDSCAPE DESIGN**

#### 5.1 Driveways and Walkways

Driveways must interface with each lot's access road in the location on each lot mandated by the Developer. Driveways should not be excessively wide and walkways should not exceed 6 feet (1.83 metres) in width. Driveways and walkways are to be constructed of concrete with a high quality exposed aggregate finish, stamped concrete, natural stone or brick pavers. Smooth or broom finished coloured concrete will only be considered when used in combination with any of the above approved materials. Asphalt and gravel are not acceptable. Driveway and walkway colours must be compatible with the

home's overall colour scheme. Driveway banding should be a minimum width of 12 inches (30.5 centimetres).

## 5.2 Gateposts at Driveway Entrances

Gateposts made of stone, brick or wood displaying house numbers at driveway entrances are encouraged.

## 5.3 Fencing

Rear and side yard boundary line fencing and fencing of non-disturbance boundaries and crests of steep slopes will be permitted to a maximum height from finished grade (on both sides of fence) of 5 feet (1.52 metres). Except in the case of larger or irregular shaped or oriented lots, side yard fencing will not be permitted to come within 20 feet (6.1 metres) of a line drawn from the front corner of the house, parallel to the front wall and meeting the property line at right angles. No fencing will be permitted in front yards or side yards abutting streets.

## 5.4 Retaining and Privacy Walls

No retaining wall should be used when instead a softly sloped retaining embankment of large rocks with interspersed plantings can be used as effectively.

Retaining walls, in general should not exceed an exposed height of 4 feet (1.2 metres), unless absolutely required. Higher walls should be designed with horizontal steps, with the width of each step equal to the height of the wall below each step, such that the overall slope of the wall will not exceed 45 degrees. Landscaping should be designed in such a way so as to soften the view of higher retaining walls from neighbouring streets or lots.

Wall materials should complement the character of the house. Natural dry stacked stone walls, walls faced with stone, brick or attractive prefabricated materials, or concrete walls with a high quality exposed aggregate finish are desirable. Irregular dumped rock walls, flat non-detailed cast in place walls, and stucco faced walls will not be permitted.

Homeowners will be encouraged to create privacy screening through the use of planted materials as opposed to privacy walls.

## 5.5 Pools and Sports Courts

Above ground swimming pools are not permitted on any lot. In-ground swimming pools will be permitted, and should be safely fenced and gated, and located in an area which can be screened, through appropriate landscape treatments, from the view of neighbouring lots. Pool fencing should be tastefully designed to a maximum height of 6 feet (1.83 metres). Pools must be equipped with an approved drainage system, such drainage system to be configured as described below.

- i) The pool pump drain outlet shall be hard plumbed to an "acceptable point of water discharge".
- ii) On lots that are serviced with a stormwater service connection, the "acceptable point of water discharge" shall be the stormwater service connection.
- iii) On lots that are not serviced with a stormwater service connection, the "acceptable point of water discharge" shall be an inground rock pit, such rock pit to be located and sized by a qualified geotechnical engineer approved by the Developer or Highpointe Strata Corporation (such as EBA Engineering Consultants Ltd.).

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All pool equipment must be housed in a fully insulated structure that is architecturally compatible with the home – no metal sheds will be allowed. Pool equipment storage areas designed within the main house itself is strongly encouraged.

No sports or tennis courts will be permitted on a lot except in exceptional circumstances.

## 5.6 Plantings

The provisions of this section govern landscaping only of the front yards and of side and rear yards which abut roadways. The front yard is defined as that area of the lot lying between a point 10 feet (3.05 metres) behind the front wall of the house (as "extended" in a straight line to the side property lines) and the back of the concrete curb located in the street right-of-way.

The landscape design of the front yard and any yard abutting a street is an important part of the overall attractiveness of the community. As a result, it is important that all homeowners maintain a minimum standard of quality. The following guidelines are not intended to control personal expression or limit design in the development of yards. Designs will be reviewed for integrity, plant maturity and stylistic influences. A suggested tree and shrub plant list is available upon request from the LRC.

The landscape plan should incorporate very generous plantings of trees and shrubs, both coniferous and deciduous, in attractive groupings. A significant variety of plant species are encouraged to help ensure the vitality of each lot's landscape should a single plant species be subject to specific diseases or pests. Plantings designed in less conventional ways incorporating large rocks, small brick or rock walls, water features and exterior lighting are encouraged. Large expanses of lawn, uninterrupted by plantings, will not be acceptable. Shrub and tree species selected should generally be of a native, drought-tolerant variety.

All landscape plans should have the following minimum plant sizes. At least 50 percent of all shrubs and 50 percent of all trees should be coniferous varieties:

- a) Shrubs: At least 50 percent should be a minimum size of 5 gallons, and at least a further 25 percent should be a minimum size of 3 gallons;
- b) Trees – Conifers: At least 20 percent should be a minimum height of 13 feet (4 metres), and at least a further 50 percent should be a minimum height of 10 feet (3 metres);
- c) Trees – Deciduous: At least 20 percent should be a minimum calliper size of 3 inches (7.5 centimetres), and at least a further 30 percent should be a minimum calliper size of 2 inches (5 centimetres).

Trees, as well as any trellises, arbours or gazebos, must be carefully located on each lot so as not to significantly restrict views from neighbouring homes. In the case of disagreements amongst owners, the decision of the LRC or the Highpointe Strata Corporation will be absolute and binding on both parties.

Variances to these minimum planting requirements may be permitted by the LRC if plans incorporating very interesting and attractive design elements are proposed. All shrubs should be tightly spaced resulting in a dense appearance according to their growing characteristics. Artificial features such as statuary and pre-cast ornaments are not permitted in the front yards.

Front yards must be well maintained by the owner at all times. Each owner's maintenance responsibility will also include the strip of vegetation lying between his/her front property line and the concrete curb of the roadway.

At a minimum, all side and rear yards not abutting roadways must be fully planted and maintained with native, drought-tolerant species of grass and shrubs to eliminate soil erosion and run-off onto neighbouring lots and over the crest of steep slopes.

### 5.7 Irrigation

All properties will be required to install a fully automated underground irrigation system.

Recognizing the indigenous hillside setting of Highpointe, individual irrigation systems are required to be designed to specifically address the unique characteristics of each homesite. Homesites backing or siding onto environmentally sensitive areas shall utilize drip irrigation systems only within 10 metres upslope of all Non Disturbance areas. In some cases small areas of "pop up" irrigation may be allowed if necessary, to complete an adjacent landscape feature area. Underground "pop-up" heads will be allowed in other areas of the lot.

Additionally, all irrigation systems shall include rainfall sensors, and an individual water use meter.

In order to promote sustainable water use at Highpointe, each home's irrigation usage shall adhere to the latest water consumption use guideline as established by the City of Kelowna Water Smart Program.

### 5.8 Tree Retention and Replacement

No trees existing on a lot at the time of final strata plan registration over 10 feet in height (in the case of a coniferous tree) and over 4 inches in calliper (in the case of a deciduous tree), and no trees, regardless of size, located in the road rights-of-way may be damaged (either during construction or at any other time), removed or excessively trimmed without the express written approval of the LRC or the Highpointe Strata Corporation. Such actions, without approval, whether or not carried out by the lot owner or his/her agent, will result in an immediate forfeiture of the Building Scheme Performance Bond of the owner of the lot on which the tree was located, replacement of the affected tree by the lot owner with as large a tree as practically possible, as well as other legal actions which may be taken by the Strata Corporation.

### 5.9 Tree Growth Restrictions and Removal

Any tree located on a lot which has been planted by any lot owner, which has been positioned or has grown such that it significantly restricts the view of a neighbouring homeowner, will be immediately topped, trimmed back to an appropriate degree, taken down or relocated by the owner, upon the reasonable request of the affected neighbour. In the case of disagreements amongst owners, the decision of the LRC or the Highpointe Strata Corporation will be absolute and binding on the parties.

At the reasonable request of an affected homeowner, the Strata Corporation will be responsible to top or trim back any street trees planted in the road rights-of-way, which have grown to the point that attractive views from the home are significantly restricted.

### 5.10 Exterior Lighting

Indirect lighting (defined as having the light source itself shielded and not directly visible from adjoining properties or the street) is permitted provided the intensity and number of sources is not excessive. Unshielded, incandescent, wall mounted entry lights will be considered on a case-by-case basis by the LRC. To ensure a well-lit front yard/street environment, each homeowner is encouraged to have a minimum of two exterior lights. The light fixtures should be of a minimum intensity of 60 watt incandescent (or equivalent), hardwired to a photocell with manual switching capability. Positioning of lighting is encouraged at the house entry and at any identification sign which may be erected, as described in section 5.13, near the driveway entrance from the street.

### 5.11 Mailboxes

Installation of cluster mailboxes is the responsibility of the Developer based on the requirements of Canada Post. No individual mailboxes are required or permitted.

### 5.12 Screening of Communication Devices, Vehicles and Other Objects

No television or radio antenna or satellite dish (above a diameter of 2 feet (0.6 metre)), receivers or other telecommunications devices shall be installed on a lot unless contained entirely within the interior of a building or in the backyard, fully screened from the view of all neighbours and all streets.

All automobiles and other permitted vehicles, if kept or parked on a lot, shall be in good order and working condition. The following types of vehicles and other items shall not be parked or kept on any lot unless enclosed in a garage or ancillary building, or located in the backyard completely screened from view from any street or from any neighbours by landscaping or fencing: recreational vehicles, trucks or commercial vehicles of more than one ton capacity, utility trailers, campers, travel trailers, buses, boats, partially wrecked or discarded vehicles, fuel tanks, service yards, firewood, trash and other unsightly vehicles and objects.

Clotheslines are only permitted in the backyard of a lot completely screened from view at any point along the street. Clotheslines are restricted to 40 feet (12 metres) in length. Generally, clotheslines are discouraged.

Dog kennels must be located in the backyard and must not be visible from any street or any neighbouring lots.

### 5.13 Signage

Homeowners are permitted to erect one small, professionally designed permanent sign in their front yard containing their last name and/or street address.

On a temporary basis, homeowners are also permitted to erect in their front yard or display from their house, one sign at any given time advertising their property for sale, provided such sign does not exceed 6 square feet (0.56 square metre) in size. During house construction only the house builder's sign (of a maximum size of 6 square feet (0.56 square metre)) and the homeowner's address sign may be posted on an individual lot. No supplier signs or sub trade signs are permitted. The builder may display supplier names on the bottom of his sign.

## 6.0 CONSTRUCTION REGULATIONS

### 6.1 General Considerations

These construction guidelines are primarily designed to maintain a safe and appealing neighbourhood environment for existing residents and potential buyers during construction of homes in Highpointe. The guidelines are not intended to overly constrain contractors but simply to provide enough control to ensure an orderly construction process.

Construction must be carried out in strict conformity with the design plans that have been approved by the ARC and the LRC. All work must be performed in a professional manner and must fully comply with all federal, provincial and municipal bylaws and building codes.

### 6.2 Permitted Working Hours

Hours of construction for all exterior work shall be as permitted under City of Kelowna bylaws.

### 6.3 Completion Schedule for Houses and Landscaping

There is no time limit by which any lot owner is required to commence construction of a house on any lot. However, once construction is commenced, construction of all buildings on a lot shall be carried out diligently from commencement of the work until fully completed (including painting, weather permitting). The maximum time limit for construction, excluding landscaping, is 12 months from the date of commencement of site work, except for unusually large homes, for which this time limit may be extended.

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No occupancy of a house may occur until after full completion of construction of its exterior and an occupancy permit has been obtained from the City of Kelowna.

If a lot owner does not commence construction of a house by six months after the closing of the lot purchase, he/she will be required to hydroseed all disturbed portions of the lot. Moreover on an ongoing basis, each owner of a vacant lot will be required to keep the lot free of garbage, unsightly objects and overgrown weeds.

Completion of all landscaping work on a lot shall be carried out diligently from commencement of the work until full completion, which must occur within 3 months of issuance by the City of Kelowna of the occupancy permit for the house. Extensions will be granted in the case of snow cover or frozen ground conditions.

#### 6.4 Damage to Utilities

The cooperation of all contractors and sub-trades is requested to minimize damage to curb boxes, water valves, pedestals (power & phone), street light terminals, shallow utility lines, hydrants, streets, manholes, curbs and other structures. Should damage occur to services or infrastructure adjacent to or on any specific lot, that lot owner will be responsible for the repair costs.

To protect utilities on and around each lot, the owner's contractor is recommended to undertake the following precautions:

- When excavating basements, the contractor should have excavators place a minimum of 400mm of excavation material along the curb to create a protective ramp for material deliveries.
- Brief sub-trades, deliverymen and all others on the importance of being careful around utility installations.
- Master plumbers should be instructed to replace water valve markers when house connections are complete.

#### 6.5 Excavation Near Trees and Survey Stakes

Extreme care should be taken when working and excavating close to trees and the planted boulevard landscaped areas. Damage to roots, contact of the tree and boulevard shrubs with construction equipment or changing the grade of land immediately around the base of trees should be avoided. If the owner or owner's contractor determines that damage or destruction to mature tree(s) (as defined in section 5.8) on a lot is unavoidable as a result of required construction activities, the LRC should be immediately contacted and his permission obtained prior to removal of the affected tree(s).

Survey stakes lost or moved by the owner or the owner's contractor must be reinstalled by the project surveyor at the expense of the owner.

#### 6.6 Blasting

Great care must be taken when blasting is carried out on a lot. Applicable governmental regulations and required approvals for any blasting work must be strictly observed and are the responsibility of the owner.

Blasting should be undertaken only in circumstances where alternate methods of rock removal are not practical or feasible.



## 6.7 Erosion Control

Provision must be made at each construction site to control erosion and run-off from the lot onto neighbouring lots or roadways. Various methods can be employed such as the use of straw bales, seeding and the shielding of excavations through the use of material such as visquine.

## 6.8 Pets during Construction

Pets, particularly dogs, are discouraged. If brought into Highpointe by construction personnel, they shall be bound by leash at all times. In the event of any violation hereof, the Developer shall have the right to contact City authorities to impound the pets, to refuse to permit the builder or subcontractor involved to continue to work on the project, or to take such other action as may be permitted by law.

## 6.9 Job Site Conditions and Behaviour

Owners and their contractors must take all reasonable steps to keep the streets, street boulevards and neighbouring lots free at all times from construction debris and garbage, run-off, construction materials, trailers and portable toilets. The construction site and surrounding areas should be regularly monitored for cleanliness. During construction, the roadway in front of the lot should be kept broom clean and the catch basin kept free of debris at all times.

Construction materials should be neatly stored on the lot at the end of each construction day. Construction waste and garbage should be disposed of in a large trash receptacle or removed from the site as required to prevent unsightly build-up of waste materials.

No rocks, plant material, topsoil, construction material or similar items should be removed from any neighbouring lots, including other construction sites.

The impact of construction activities on neighbouring residents must be kept to a minimum by treating neighbours in a courteous manner. Issues include parking, speeding, loud music, loud profane language and the borrowing of power, water or telephone service from neighbours.

## 7.0 SERVICE CONNECTIONS

Upon final subdivision plan approval, each lot will be serviced with water, sanitary sewer, electricity, gas, telephone and cablevision. Some lots will also be serviced with a storm sewer connection. All services are underground and all connections to homes similarly must be built below grade. The suppliers of these services are as follows:

Water:	Terasen Utility Services Phone: 250.979.4928
Sanitary sewer:	Highpointe Strata Corporation c/o Site 360 Group Inc. Phone: 250.862.3600
Storm sewer:	Highpointe Strata Corporation c/o Site 360 Group Inc. Phone: 250.862.3600
Electricity:	Fortis BC Phone: 866.436.7847
Gas:	Terasen Gas Phone: 888.224.2710

## Highpointe Building Scheme

Telephone: Telus  
Phone: 250.310.2255

Cablevision: Shaw Cable  
Phone: 250.979.6565

Connections to water mains, sanitary sewers and storm sewers are to be made in accordance with City of Kelowna regulations. Authority for such connections will be obtained by contacting Terasen Utility Services, by making an application for a Building Permit to the City of Kelowna and by paying all applicable hook-up and related charges.

Arrangements should be made with the above suppliers of electrical, gas, telephone and cable services for the supply of these services by means of underground connections to the owner's home and for the payment of any fees charged in relation to such connections.

## 8.0 HOUSE AND LANDSCAPE PLANS – DETAILED REQUIREMENTS

As described in section 2.0 herein, once the lot owner is confident that his/her intended exterior house design and positioning on the lot is generally acceptable to the ARC, he/she should have three complete sets of the following plans submitted to the ARC for his formal review and approval. Once all of the changes, if any, are made to the satisfaction of the ARC, he will retain one set of final plans for his records and will return the other two sets to the lot owner with his signature thereon specifying his approval. The lot owner will then be in a position to complete his/her detailed working drawings and apply for a building permit.

### 8.1 Site Plan(s)

This drawing (or drawings) should show at least the following information:

- a) Property boundaries, dimensions and total area.
- b) Locations and finished ground floor grades of all buildings and decks showing dimensions and square footage of each.
- c) Locations of all trees (or groupings of trees) which are to be retained.
- d) Locations of trees proposed to be removed (such trees should be flagged on site).
- e) Proposed finished lot grades and existing lot grades shown in one metre contours. Plans showing existing grades are available from the Highpointe project's civil engineer, Site 360 Group Inc., 477 Leon Avenue, Kelowna, B.C., V1Y 6J4, phone 250-862-3600.
- f) The building envelope.
- g) Non-disturbance and house/pool foundation setback lines, if any, and easements and rights-of-way, if any.
- h) Locations of all built surfaces such as driveways, walkways, parking areas, decks, patios, pools, hot tubs, stairs, walls and fences.
- i) Line of proposed roof overhangs.
- j) Routing of site and footing drainage.
- k) All utility routings and connections to house.

### 8.2 Landscape Plan(s)

This drawing (or drawings) should show at least the following information for the lot's front yard and side yard abutting a flanking street:

- a) Materials, colours and specifications of all built surfaces such as driveways, walkways, parking areas, decks, patios, hot tubs, stairs, walls and fences.

## Highpointe Building Scheme

- b) Location and details (such as common names, size and height) of all plantings and planting beds.
- c) Complete specifications of all other landscape elements such as putting greens, planters, ornamentation, water features, rockery gardens, landscape lighting and the like.
- d) Treatment of remainder of the lot not specified above including lawn and ground cover areas.

### 8.3 Elevation Drawing(s)

This drawing (or drawings) should show at least the following information:

- a) Building elevations showing the design of each exterior wall of each building on the lot, as well as both the finished and existing grades.
- b) Design and specifications of exterior siding, exposed foundation, fascia, soffits, eaves, roofs, skylights, doors, windows, porches, decks, chimneys, railings, exterior indirect lighting, building height limits per applicable City of Kelowna RU1 by-law and actual building height as measured using applicable standards.

### 8.4 Cross Section Drawing(s)

This drawing (or drawings) should show at least the following information:

- a) Cross section(s) detailing the design of the foundation, exterior walls and roof.

### 8.5 Floor Plan(s)

This drawing (or drawings) should show at least the following information:

- a) The internal layout and dimensions of all rooms on all floors of all buildings on the lot including the total square footage of each floor and the location and size of all exterior doors and window openings.

### 8.6 Samples

Colour and material samples should be used wherever practical to demonstrate proposed exterior colours and materials. These should include paint samples of all exterior colours, including a description of where each occurs. A description (or sample if appropriate) of the proposed roofing material should also be provided.

January 25, 2007

END of Document

*5 add titles*

M 18243

THIS INDENTURE made the 30 day of December, A. D. 1976

BETWEEN:

77 APR 1

OKANAGAN BUILDERS LAND DEVELOPMENT LTD.  
a body corporate duly incorporated under  
the laws of the Province of British  
Columbia and carrying on business at  
2949 Pandosy Street, in the City of  
Kelowna, in the Province of British Columbia,  
(hereinafter called the "Grantor")

OF THE FIRST PART

A N D:

CITY OF KELOWNA, a Municipal Corporation  
having its offices at 1435 Water Street,  
Kelowna, in the Province of British Columbia,  
(hereinafter called the "Grantee")

OF THE SECOND PART

WHEREAS the Grantor is the registered owner of an estate in  
fee simple of ALL AND SINGULAR those certain parcels or tracts  
of land and premises situate, lying and being in the City of  
Kelowna, in the Province of British Columbia and being more  
particularly known and described as:

*1796151*  
*1796191*  
*1796301*  
*1796311*  
*1796221*  
*1796231*  
*D21196*  
*D21197*

Lots (33, 35, 37, 38, 39, 40, 41) and (42),  
Plan, 27662 Section 30 Township 26 Osoyoos  
Division Yale District, AND

Lots (14, 43, 47, 49, 50) and 51 Plan, 27662  
Section 30, Township 26 Osoyoos Division  
Yale District

(hereinafter called the "Lands of the Grantor")

AND WHEREAS to facilitate the installation of a system of  
sewerage works, and/or water works, and/or drainage works and/or  
gas works including all pipes, valves, fittings and facilities  
in connection therewith and/or hydro electric works including  
all wires, poles, conduits and other facilities in connection  
therewith;

(hereinafter called the "Works")

Registered the 5 Day of 4  
1977 On Application Received  
at the time Written or Stamped  
On the Application.

*J*  
**ANDREWS & COMPANY**  
REGISTERED & EDITORS  
300-153 SEYMOUR ST.  
KAMLOOPS, B. C.

The Grantor has agreed to permit the construction by the Grantee  
of the aforementioned works on a portion of the said Land and

SUB-FORM "C"  
Applicant: Gilhooly & Company  
Declared Value: Nominal  
Nature of Charge: Easement Agreement

6664 0007.50 - 2

*[Signature]*  
Signature of Agent

1 APR 77

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to grant for that purpose the right-of-way hereinafter described;

NOW THEREFORE THIS INDENTURE WITNESSETH that in consideration of the sum of ONE DOLLAR AND OTHER GOOD AND VALUABLE CONSIDERATION (\$1.00) now paid by the Grantee to the Grantor (the receipt and sufficiency of which is hereby acknowledged by the Grantor), and in consideration of the covenants and conditions hereinafter contained to be observed and performed by the Grantee and for other valuable consideration:

1.0 THE GRANTOR DOTH HEREBY:

1.1 Grant, convey, confirm and transfer, in perpetuity, unto the Grantee the full, free and uninterrupted right, license, liberty, privilege, permission and right-of-way to lay down, install, construct, entrench, operate, maintain, inspect, alter, remove, replace, bury, cleanse, string, and otherwise establish one or more systems of Works upon, over, under and across that part of the Land of the Grantor as shown outlined in red on Right-of-Way Plan number A12822 and Plan number A12824

1.2 Covenant and agree to and with the Grantee that for the purposes aforesaid and upon, over, under and across the Perpetual Right-of-Way the Grantee shall for itself and its servants, agents, workmen, contractors and all other licensees of the Grantee together with machinery, vehicles, equipment, and materials be entitled at all times to enter, use, pass and repass, labour, construct, erect, install,

- 3 -

dig, carry away soil or other surface or subsurface materials, clear of all trees, growth, buildings or obstruction now or hereafter in existence, as may be necessary, useful, or convenient in connection with the operations of the Grantee in relation to the Works;

1.3 Grant, convey, confirm and transfer unto the Grantee for itself, and its servants, agents, workmen, contractors and all other licensees of the Grantee together with machinery, vehicles, equipment and materials the right at all reasonable times to enter upon and to pass and repass over such of the Lands of the Grantor as may reasonably be required for the purpose of ingress to and egress from the Perpetual Right-of-Way;

1.4 Grant, convey, confirm and transfer unto the Grantee for itself, and its servants, agents, workmen, contractors and all other licensees of the Grantee together with machinery, vehicles, equipment and materials for a period of two days only from the date of this Agreement, the full, free and uninterrupted right, license, liberty, privilege, permission and right-of-way to enter upon, pass and repass, clear, labour, and use for the purpose of ingress and egress to and from the Perpetual Right-of-Way and for the purpose of storing machinery, vehicles, equipment, material or supplies used or to be used in connection with the construction of the Works herein described, and for the purpose of placing or storing the surface or subsurface material to be excavated from the Perpetual Right-of-Way upon and over, but not under that part or parts of the Lands of the Grantor, shown outlined in ~~red~~ on Right-of-Way Plan number A12822 & A12824

(hereinafter called the "Working Right-of-Way")

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Provided always, and it is hereby agreed that nothing herein contained shall permit the Grantee to dig, trench or otherwise disturb the subsurface material to be excavated from the Perpetual Right-of-Way upon and over, but not under that part or parts of the Lands of the Grantor, shown outlined in green on Right-of-Way Plan number A12822 & A12824

(hereinafter called the "Working Right-of-Way")

Provided always, and it is hereby agreed that nothing herein contained shall permit the Grantee to dig, trench or otherwise disturb the subsurface of the Working Right-of-Way and the Grantee shall only clear such trees and growth and interfere and disturb the surface of the Working Right-of-Way and the Grantee shall only clear such trees and growth and interfere and disturb the surface of the Working Right-of-Way in a manner that is reasonably necessary in the conduct of its operations thereon;

2.0 THE GRANTOR HEREBY COVENANTS TO AND AGREES WITH THE GRANTEE, as follows:

2.1 That the Grantor will not, nor permit any other person to erect, place, install or maintain any building, structure, mobile home, concrete driveway or patio, pipe, wire or other conduit on, over or under any portion of the Perpetual Right-of-Way so that it in any way interferes with or damages or prevents access to, or is likely to cause harm to Works authorized hereby to be installed in or upon the Perpetual Right-of-Way;

2.2 That the Grantor will not do nor knowingly permit to be done any act or thing which will interfere with or injure the said Works and in particular will

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not carry out any blasting on or adjacent to the Perpetual Right-of-Way without the consent in writing of the Grantee, provided that such consent shall not be unreasonably withheld;

2.3 That the Grantor will not substantially diminish the soil cover over any of the Works installed in the Perpetual Right-of-Way and in particular, without in any way limiting the generality of the foregoing, will not construct open drains or ditches along or across any of the Works installed in the Perpetual Right-of-Way;

2.4 That the Grantor will from time to time and at all times upon every reasonable request and at the cost of the Grantee do and execute or cause to be made, done or executed all such further and other lawful acts, deeds, things, devices, conveyances and assurances in law whatsoever for the better assuring unto the Grantee of the rights hereby granted.

3.0 THE GRANTEE HEREBY COVENANTS TO AND AGREES WITH THE GRANTOR, as follows:

3.1 That the Grantee will not bury any debris or rubbish of any kind in excavations or backfill, and will remove shoring and like temporary structures as backfilling proceeds;

3.2 That the Grantee will thoroughly clean all lands to which it has had access hereunder of all rubbish and construction debris created or placed thereon by the Grantee and will leave such lands in a neat and clean condition;

3.3 That the Grantee will, as soon as weather and soil conditions permit, and so often as it may exercise its right of entry hereunder to any of the Lands of the Grantor, replace the surface soil as nearly



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as may be reasonably possible to the same condition as it was prior to such entry, in order to restore the natural drainage to such lands. PROVIDED HOWEVER that nothing herein contained shall require the Grantee to restore any trees or other surface growth but the Grantee shall leave such lands in a condition which will not inhibit natural regeneration of such growth;

3.4 That the Grantee will, as far as reasonably possible, carry out all work in a proper and workmanlike manner so as to do as little injury to the Lands of the Grantor as possible;

3.5 That the Grantee will make good at its own expense all damage or disturbance which may be caused to the surface soil of the Lands of the Grantor in the exercise of its rights hereunder;

3.6 The Grantee will, as far as reasonably possible, restore any fences, lawns, flower beds, at its cost as nearly as may be reasonably possible to the same condition that they were in prior to any entry by the Grantee upon the Lands.

4.0 THE PARTIES HERETO EACH HEREBY COVENANT TO AND AGREE WITH THE OTHER, as follows:

4.1 The said Works referred to above, together with all pipes, valves, conduits, wires, casings, fittings, lines, meters, appliances, facilities, attachments or devices used in connection therewith shall constitute the Works;

4.2 Notwithstanding any rule of law or equity to the contrary, the Works brought on to, set, constructed, laid, erected in, upon or under the Perpetual Right-of-Way by the Grantee shall at all times remain the property of the Grantee notwithstanding

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that the same may be annexed or affixed to the freehold and shall at any time and from time to time be removable in whole or in part by the Grantee;

4.3 In the event that the Grantee abandons the Works or any part thereof the Grantee may, if it so elects, leave the whole or any part thereof in place;

4.4 That no part of the title in fee simple to the soil shall pass to or be vested in the Grantee under or by virtue of these presents and the Grantor may fully use and enjoy all of the Lands of the Grantor subject only to the rights and restrictions herein contained;

4.5 That the covenants herein contained shall be covenants running with the land and that none of the covenants herein contained shall be personal or binding upon the parties hereto, save and except during the Grantor's seisin or ownership of any interest in the Lands of the Grantor, and with respect only to that portion of the Lands of the Grantor of which the Grantor shall be seised or in which he shall have an interest, but that the Lands of the Grantor, nevertheless, be and remain at all times charged therewith;

4.6 If at the date hereof the Grantor is not the sole registered owner of the Lands of the Grantor, this Agreement shall nevertheless bind the Grantor to the full extent of his interest therein and if he shall acquire a greater or the entire interest in fee simple, this Agreement shall likewise extend to such after-acquired interests;

4.7 Where the expression "Grantor" includes more than one person, all covenants herein on the part of

the Grantor shall be construed as being several as well as joint;

4.8 This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective heirs, administrators, executors and successors and assigns as the case may be and wherever the singular or masculine is used, where the parties or the context hereto so require and the rest of the sentence shall be construed as if the grammatical and terminological changes thereby rendered necessary had been made.

IN WITNESS WHEREOF the parties hereto have executed these presents in the manner and on the date hereinafter appearing.

The Corporate Seal of the Grantor was hereunto affixed this 30 day of December, A.D. 1976 in the presence of:

*[Handwritten signature]*  
\_\_\_\_\_  
\_\_\_\_\_

The Corporate Seal of the CITY OF KELOWNA was hereunto affixed this 3<sup>rd</sup> day of December, A.D. 1976 in the presence of:

*[Handwritten signature]*  
\_\_\_\_\_  
\_\_\_\_\_

"This is the instrument of the...  
or covenant...  
Land...  
referred to here and...  
the plan initiated by me and annexed hereto."

*[Handwritten signature]*  
APPROVING OFFICER  
CITY OF KELOWNA

ACKNOWLEDGEMENT OF OFFICER OF CORPORATION

I HEREBY CERTIFY that, on the 30 day of December 1976, at Kelowna, in the Province of British Columbia, *Amos Austin Blackford* who is personally known to me, appeared before me and acknowledged to me that he is the *General Manager* of Okanagan Builders Land Development Ltd. and that he is the person who subscribed his name to the annexed instrument as *General Manager* of the said Corporation and affixed the seal of the Corporation to the said Instrument, that he was first duly authorized to subscribe his name as aforesaid, and affix the said seal to the said Instrument, and that such corporation is legally entitled to hold and dispose of land in the Province of British Columbia.

IN TESTIMONY whereof I have herunto set my hand and seal of Office at Kelowna in the Province of British Columbia, this 30 day of *December*, 1976.

A Commissioner for taking Affidavits for British Columbia.

*Robert G. Gilhooly*

ACKNOWLEDGEMENT OF OFFICER OF CORPORATION

I HEREBY CERTIFY that, on the \_\_\_\_\_ day of December 1976, at Kelowna \_\_\_\_\_, in the Province of British Columbia, who is personally known to me, appeared before me and acknowledged to me that he is the \_\_\_\_\_ of City of Kelowna and that he is the person who subscribed his name to the annexed instrument as \_\_\_\_\_, of the said Corporation and affixed the seal of the Corporation to the said Instrument, that he was first duly authorized to subscribe his name as aforesaid, and affix the said seal to the said Instrument, and that such corporation is legally entitled to hold and dispose of land in the Province of British Columbia.

IN TESTIMONY whereof I have hereunto set my hand and seal of Office at Kelowna \_\_\_\_\_ in the Province of British Columbia, this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_.

A Commissioner for taking Affidavits for British Columbia.