

BL10566, BL10674 amended SCHEDULE "B" and BL10974 replaced SCHEDULE "B":

SCHEDULE "B"
Revitalization Tax Exemption Agreement

THIS AGREEMENT dated for reference the 12th day of October, 2017 is

BETWEEN:

Cerco Developments Ltd.
3 - 1331 Ellis Street
Kelowna, BC
V1Y 1Z9

AND:

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

(the "City")

GIVEN THAT:

- A. The Owner is the registered owner in fee simple of lands in the City of Kelowna at 955 Leon Avenue legally described as *Lot A, D.L. 138, O.D.Y.D. plan KAP82339* (the "Parcel");
- B. Council has established a revitalization tax exemption program and has included within the City of Kelowna Revitalization Tax Exemption Program Bylaw No. 9561 the designation of areas which include the Parcel as a revitalization area; and
- C. The Owner proposes to construct new improvements *[or alter existing improvements]* on the Parcel as described in Appendix "A" attached to and forming part of this agreement (the "Project") and has applied to the City to take part in the revitalization tax exemption program in respect of the Project and the City has agreed to accept the Project under the program;

THIS AGREEMENT is evidence that in consideration of the promises exchanged below, the Owner and the City covenant and agree each with the other as follows:

- 1. **The Project** - the Owner will use its best efforts to ensure that the Project is constructed, maintained, operated and used in a fashion that will be consistent with and will foster the objectives of the revitalization tax exemption program, as outlined in the City of Kelowna Revitalization Tax Exemption Program Bylaw No. 9561. Without limiting the generality of the foregoing, the Owner covenants to use its best efforts to ensure that the Project will:
 - a. Build 28 suites extra to the existing rental complex for the sole purposes of renting
 - b. Within those 28 units 4 units are to be built as HC accessible units for tenants with disabilities

2. **Operation and Maintenance of the Project** - throughout the term of this agreement, the Owner shall operate, repair and maintain the Project and will keep the Project in a state of good repair as a prudent owner would do.
3. **Revitalization Amount** - Refers to the municipal portion of property tax calculated in relation to the increase in the assessed value of improvements on the property resulting from the construction or alterations as outlined in section 1 of this agreement;
4. **Revitalization Tax Exemption** - subject to fulfilment of the conditions set out in this agreement and in “City of Kelowna Revitalization Tax Exemption Program Bylaw No. 9561”, the City shall issue a revitalization tax exemption certificate (the “Tax Exemption Certificate”) to the British Columbia Assessment Authority entitling the Owner to a property tax exemption in respect of the property taxes due (not including local service taxes) in relation to the Revitalization Amount on the Parcel (the “Tax Exemption”) for the calendar year(s) set out in this agreement.
5. **Conditions** - the following conditions shall be fulfilled before the City will issue a Tax Exemption Certificate to the Owner in respect of the Project:
 - a. The Owner must obtain a building permit from the City for the Project on or before September 20, 2017;
 - b. The Owner must complete or cause to be completed construction of the Project in a good and workmanlike fashion and in strict compliance with the building permit and the plans and specifications attached hereto as Appendix “A” and the Project must be officially opened for use as a *rental apartment - Prato Square* (the “Exempt Use”) and for no other use, by no later than August 1, 2018;
 - c. The Owner must submit a copy of the Occupancy Permit and Revitalization Tax Exemption Agreement to the City of Kelowna’s Revenue Branch before the City will issue the Tax Exemption Certificate.
 - d. The completed Project must substantially satisfy the performance criteria set out in Appendix “B” hereto, as determined by the City’s Urban Planning Manager or designate, in their sole discretion, acting reasonably.
6. **Calculation of Calculation of Revitalization Tax Exemption** - the amount of the Tax Exemption shall be equal to
 - a) For Purpose-Built Rental Housing Projects throughout the City, 100% of the Revitalization Amount on the Parcel where the project is subject to a Housing Agreement (for up to 10 years) and is in compliance with the OCP Future Land Use designation as at May 30, 2011. A tax incentive for rental housing will only be considered when the vacancy rate is at or below 3%;
7. **Term of Tax Exemption** - provided the requirements of this agreement, and of the City of Kelowna Revitalization Tax Exemption Program Bylaw No. 9561, are met the Tax Exemption shall be for the taxation years 2019 to 2028, inclusive.
8. **{deleted}**

9. **Compliance with Laws** - the Owner shall construct the Project and, at all times during the term of the Tax Exemption or any renewal term, use and occupy the Parcel and the Project in compliance with all statutes, laws, regulations and orders of any authority having jurisdiction and, without limiting the generality of the foregoing, all federal, provincial, or municipal laws or statutes or bylaws, including all the rules regulations policies guidelines criteria or the like made under or pursuant to any such laws.
10. **Effect of Stratification** - if the Owner stratifies the Parcel or the Project under the *Strata Property Act*, then the Tax Exemption shall be prorated among the strata lots in accordance with the unit entitlement of each strata lot for:

- a. the current and each subsequent tax year during the currency of this agreement if the strata plan is accepted for registration at the Land Title Office before May 1; or
- b. for the next calendar year and each subsequent tax year during the currency of this agreement if the strata plan is accepted for registration at the Land Title Office after May 1;

so long as, where a Housing Agreement exists in relation to the Parcel or the Project which limits ability to stratify, the Housing Agreement is still complied with.

11. **Cancellation** - the City may in its sole discretion cancel the Tax Exemption Certificate at any time:
- a. on the written request of the Owner; or
 - b. effective immediately upon delivery of a notice of cancellation to the Owner if at any time any of the conditions in the Tax Exemption Certificate are not met.

If such cancellation occurs, the Owner of the Parcel for which the Tax Exemption Certificate was issued will remit to the City an amount equal to the value of any Tax Exemption received after the cancellation of the Tax Exemption Certificate.

12. **No Refund** - for greater certainty, under no circumstances will the Owner be entitled under the City's revitalization tax exemption program to any cash credit, any carry forward tax exemption credit or any refund for any property taxes paid.
13. **Notices** - any notice or other writing required or permitted to be given hereunder or for the purposes hereof to any party shall be sufficiently given if delivered by hand or posted on the Parcel, or if sent by prepaid registered mail (Express Post) or if transmitted by facsimile to such party:

- a. in the case of a notice to the City, at:

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

Attention: Angie Schumacher
250-470-0687

- b. in the case of a notice to the Owner, at:

Cerco Developments Ltd.
3 - 1331 Ellis Street
Kelowna, BC
V1Y 1Z9

Attention: Carlo DiStefano
Fax: 250-868-9217

Or at such other address as the party to whom such notice or other writing is to be given shall have last notified the party giving the same.

14. **No Assignment** - the Owner shall not assign its interest in this agreement except to a subsequent owner in fee simple of the Parcel.
15. **Severance** - if any portion of this agreement is held invalid by a court of competent jurisdiction, the invalid portion shall be severed and the decision that it is invalid shall not affect the validity of the remainder of this agreement.
16. **Interpretation** - wherever the singular or masculine is used in this agreement, the same shall be construed as meaning the plural, the feminine or body corporate where the context or the parties thereto so require.
17. **Further Assurances** - the parties hereto shall execute and do all such further deeds, acts, things and assurances that may be reasonably required to carry out the intent of this agreement.
18. **Waiver** - waiver by the City of a default by the Owner shall be in writing and shall not be deemed to be a waiver of any subsequent or other default.

19. **Powers Preserved** - this agreement does not:
- a. Affect or limit the discretion, rights or powers of the City under any enactment or at common law, including in relation to the use or subdivision of the Parcel;
 - b. Affect or limit any enactment relating to the use or subdivision of the Parcel; or
 - c. Relieve the Owner from complying with any enactment, including in relation to the use or subdivision of the Parcel and without limitation shall not confer directly or indirectly any exemption or right of set-off from development cost charges, connection charges, application fees, user fees or other rates, levies or charges payable under any bylaw of the City.
20. **Reference** - every reference to each party is deemed to include the heirs, executors, administrators, personal representatives, successors, assigns, servants, employees, agents, contractors, officers, licensees and invitees of such party, wherever the context so requires or allows.
21. **Enurement** - this agreement shall ensure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns.
22. Any construction of a new improvement or alteration of an existing improvement as of this bylaw undertaken prior to the application for a Revitalization Tax Exemption will not be eligible for consideration
23. The maximum Revitalization Tax Exemption authorized under this Bylaw must not exceed the Revitalization Amount on the Property between:
- a. the calendar year before the construction or alteration began, as outlined under Section 1 of this agreement; and
 - a. the calendar year in which the construction or alteration, as outlined under Section 1 of this agreement, is completed.
24. The Property's assessed value of improvements must not be reduced below the amount assessed in the calendar year prior to construction or alteration, as a result of the Revitalization Tax Exemption.

IN WITNESS WHEREOF the parties hereto have executed this agreement as of the day and year first above written.

Executed by the CITY OF KELOWNA by
Its authorized signatories:

Mayor

City Clerk

Executed by Carlo DiStefano its
Authorized signatories:

A handwritten signature in black ink, reading "Carlo DiStefano". The signature is written in a cursive, flowing style with a large initial 'C' and a stylized 'D'.

Name: Carlo DiStefano

Name:

Appendix "A": Plans and Specifications

Appendix "B": Performance Criteria

Schedule "C"

Tax Exemption Certificate

In accordance with the City of Kelowna Revitalization Tax Exemption Program Bylaw No. 9561 (the "Bylaw"), and in accordance with a Revitalization Tax Exemption Agreement dated for reference the 12 day of October, 2017 (the "Agreement") entered into between the City of Kelowna (the "City") and Cerco Developments Ltd. (the "Owner"), the registered owner(s) of Lot A, D.L. 138, O.D.Y.D. PLAN KAP82339 (the "Parcel):

This certificate certifies that the Parcel is subject to a Revitalization Tax Exemption, for each of the taxation years 2019 to 2028 inclusive, equal to:

1. Purpose-Built Rental Housing Project, 100% of the Revitalization Amount attributed to Building Permit No BP55624 between 2017 (the calendar year before the commencement of construction of the project) and 2018(the calendar year in which the Revitalization Tax Exemption Certificate is issued)Any construction of a new improvement or alteration of an existing improvement, on the Parcel described above, undertaken prior to the application for a Revitalization Tax Exemption will not be eligible for consideration;

The maximum Revitalization Tax Exemption authorized must not exceed the increase in the assessed value of improvements on the property resulting from the construction or alterations attributed to Building Permit No BP55624 between 2017 (the calendar year before the commencement of construction of the project) and 2018 (the calendar year in which the Revitalization Tax Exemption Certificate is issued);

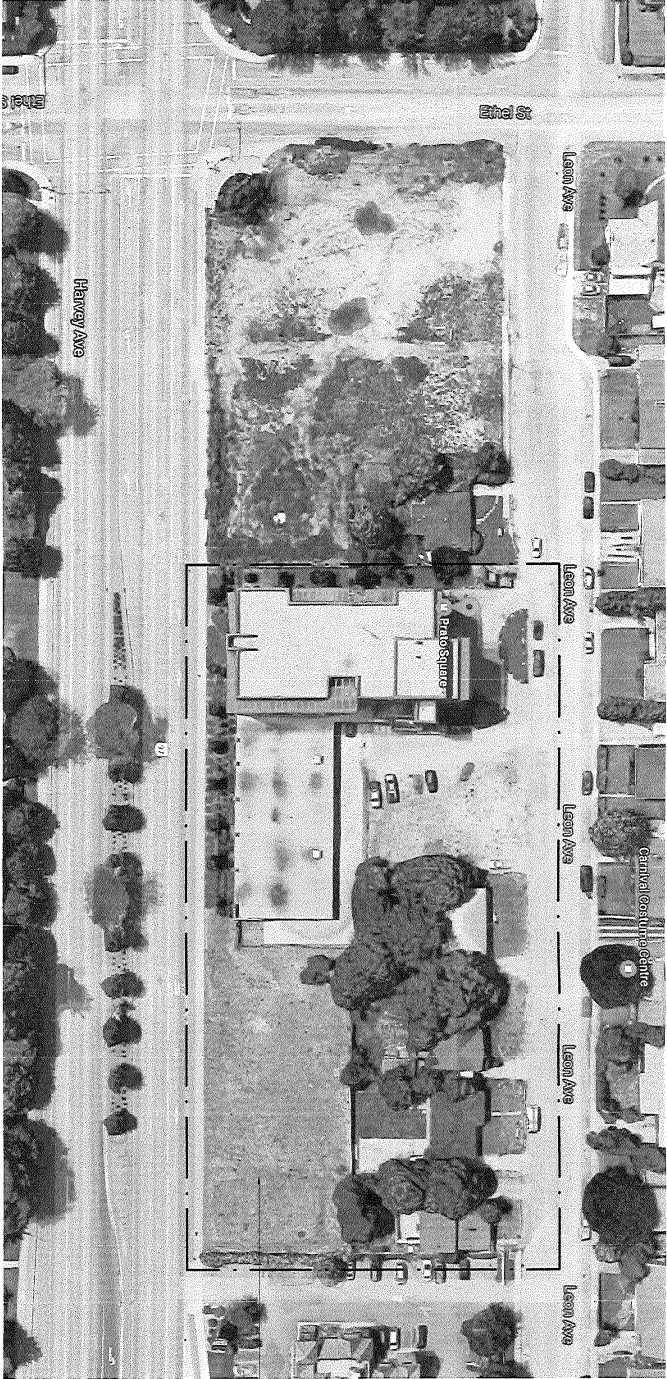
The Property's assessed value of improvements must not be reduced below the amount assessed in the calendar year prior to construction or alteration, as a result of the Revitalization Tax Exemption.

The Revitalization Tax Exemption is provided under the following conditions:

1. The Owner does not breach any term, condition or provision of, and performs all obligations set out in, the Agreement and the Bylaw;
2. The Owner has not sold all or any portion of his or her equitable or legal fee simple interest in the Parcel without the transferee taking an assignment of the Agreement, and agreeing to be bound by it;
3. The Owner, or a successor in title to the Owner, has not allowed the property taxes for the Parcel to go into arrears or to become delinquent;
4. The Exempt Use (as defined in the Agreement) of the Project is not discontinued;

If any of these conditions are not met then the Council of the City of Kelowna may cancel this Revitalization Tax Exemption Certificate. If such cancellation occurs, the Owner of the Parcel, or a successor in title to the Owner as the case may be, shall remit to the City an amount equal to the value of the exemption received after the date of the cancellation of the certificate.

PRATO SQUARE PHASE 2 - 28 UNITS

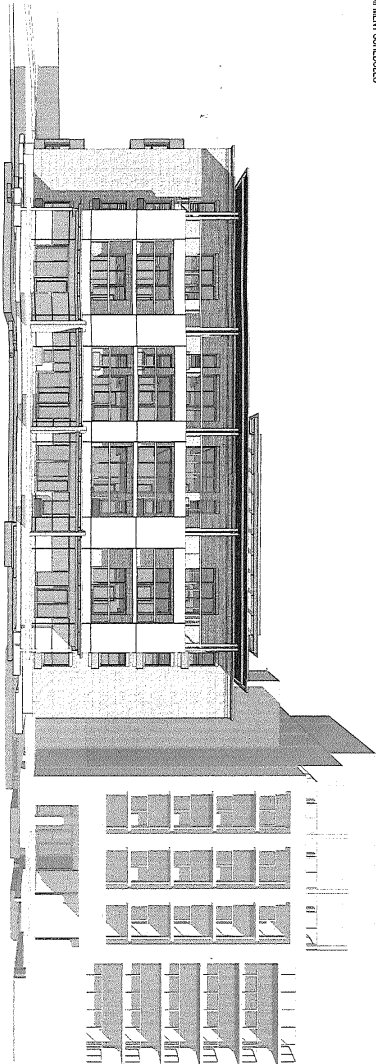


955 LEON AVENUE
KELOWNA, BC
ISSUED FOR BUILDING
PERMIT REVIEW - 17.05.23

SUBJECT PROPERTY

DRAWING LIST

| ARCHITECTURAL | | STRUCTURAL | MECHANICAL | ELECTRICAL | LANDSCAPING | CIVIL |
|---------------|---|------------|------------|------------|-------------|-------|
| A01 | COVER SHEET | S1.1 | M1.0 | E1 | L1 | |
| A1-1 | SITE PLAN | S1.2 | M1.1 | E2 | L2 | |
| A1-2 | FOUNDATION | S1.3 | M1.2 | E3 | L3 | |
| A2 | LEVEL 1 - OVERALL FLOOR PLAN | S2 | M2 | E4 | L4 | |
| A2.1 | LEVEL 1 - OVERALL FLOOR PLAN | S2.1 | M2.1 | E5 | L5 | |
| A2.2 | LEVEL 1 - OVERALL FLOOR PLAN | S2.2 | M2.2 | E6 | L6 | |
| A2.3 | LEVEL 1 - OVERALL FLOOR PLAN | S2.3 | M2.3 | E7 | | |
| A2.4 | LEVEL 1 - OVERALL FLOOR PLAN | S2.4 | M2.4 | | | |
| A2.5 | LEVEL 1 - OVERALL FLOOR PLAN | S2.5 | M2.5 | | | |
| A2.6 | LEVEL 1 - OVERALL FLOOR PLAN | S2.6 | M2.6 | | | |
| A2.7 | LEVEL 1 - OVERALL FLOOR PLAN | S2.7 | M2.7 | | | |
| A2.8 | LEVEL 1 - OVERALL FLOOR PLAN | S2.8 | M2.8 | | | |
| A2.9 | LEVEL 1 - OVERALL FLOOR PLAN | S2.9 | M2.9 | | | |
| A3 | BUILDING ELEVATIONS | | M3 | | | |
| A3.1 | BUILDING ELEVATIONS | | M3.1 | | | |
| A3.2 | BUILDING ELEVATIONS | | M3.2 | | | |
| A3.3 | BUILDING ELEVATIONS | | M3.3 | | | |
| A3.4 | BUILDING ELEVATIONS | | M3.4 | | | |
| A3.5 | BUILDING ELEVATIONS | | M3.5 | | | |
| A3.6 | BUILDING ELEVATIONS | | M3.6 | | | |
| A3.7 | BUILDING ELEVATIONS | | M3.7 | | | |
| A3.8 | BUILDING ELEVATIONS | | M3.8 | | | |
| A3.9 | BUILDING ELEVATIONS | | M3.9 | | | |
| A4 | STAIR PLANS, SECTIONS & DETAILS | | | | | |
| A4.1 | STAIR PLANS, SECTIONS & DETAILS | | | | | |
| A4.2 | STAIR PLANS, SECTIONS & DETAILS | | | | | |
| A4.3 | STAIR PLANS, SECTIONS & DETAILS | | | | | |
| A4.4 | STAIR PLANS, SECTIONS & DETAILS | | | | | |
| A4.5 | STAIR PLANS, SECTIONS & DETAILS | | | | | |
| A4.6 | STAIR PLANS, SECTIONS & DETAILS | | | | | |
| A4.7 | STAIR PLANS, SECTIONS & DETAILS | | | | | |
| A4.8 | STAIR PLANS, SECTIONS & DETAILS | | | | | |
| A4.9 | STAIR PLANS, SECTIONS & DETAILS | | | | | |
| A5 | ROOF PLAN, SECTIONS & DETAILS | | | | | |
| A5.1 | ROOF PLAN, SECTIONS & DETAILS | | | | | |
| A5.2 | ROOF PLAN, SECTIONS & DETAILS | | | | | |
| A5.3 | ROOF PLAN, SECTIONS & DETAILS | | | | | |
| A5.4 | ROOF PLAN, SECTIONS & DETAILS | | | | | |
| A5.5 | ROOF PLAN, SECTIONS & DETAILS | | | | | |
| A5.6 | ROOF PLAN, SECTIONS & DETAILS | | | | | |
| A5.7 | ROOF PLAN, SECTIONS & DETAILS | | | | | |
| A5.8 | ROOF PLAN, SECTIONS & DETAILS | | | | | |
| A5.9 | ROOF PLAN, SECTIONS & DETAILS | | | | | |
| A6 | LEVEL 1 - ENLARGED CEILING PLANS | | | | | |
| A6.1 | LEVEL 1 - ENLARGED CEILING PLANS | | | | | |
| A6.2 | LEVEL 1 - ENLARGED CEILING PLANS | | | | | |
| A6.3 | LEVEL 1 - ENLARGED CEILING PLANS | | | | | |
| A6.4 | LEVEL 1 - ENLARGED CEILING PLANS | | | | | |
| A6.5 | LEVEL 1 - ENLARGED CEILING PLANS | | | | | |
| A6.6 | LEVEL 1 - ENLARGED CEILING PLANS | | | | | |
| A6.7 | LEVEL 1 - ENLARGED CEILING PLANS | | | | | |
| A6.8 | LEVEL 1 - ENLARGED CEILING PLANS | | | | | |
| A6.9 | LEVEL 1 - ENLARGED CEILING PLANS | | | | | |
| A7 | ASSEMBLES, EXTERIOR FINISHES SCHEDULE & WINDOW SCHEDULE | | | | | |
| A7.1 | ASSEMBLES, EXTERIOR FINISHES SCHEDULE & WINDOW SCHEDULE | | | | | |
| A7.2 | ASSEMBLES, EXTERIOR FINISHES SCHEDULE & WINDOW SCHEDULE | | | | | |
| A7.3 | ASSEMBLES, EXTERIOR FINISHES SCHEDULE & WINDOW SCHEDULE | | | | | |
| A7.4 | ASSEMBLES, EXTERIOR FINISHES SCHEDULE & WINDOW SCHEDULE | | | | | |
| A7.5 | ASSEMBLES, EXTERIOR FINISHES SCHEDULE & WINDOW SCHEDULE | | | | | |
| A7.6 | ASSEMBLES, EXTERIOR FINISHES SCHEDULE & WINDOW SCHEDULE | | | | | |
| A7.7 | ASSEMBLES, EXTERIOR FINISHES SCHEDULE & WINDOW SCHEDULE | | | | | |
| A7.8 | ASSEMBLES, EXTERIOR FINISHES SCHEDULE & WINDOW SCHEDULE | | | | | |
| A7.9 | ASSEMBLES, EXTERIOR FINISHES SCHEDULE & WINDOW SCHEDULE | | | | | |
| A8 | DOOR SCHEDULE | | | | | |
| A8.1 | DOOR SCHEDULE | | | | | |
| A8.2 | DOOR SCHEDULE | | | | | |
| A8.3 | DOOR SCHEDULE | | | | | |
| A8.4 | DOOR SCHEDULE | | | | | |
| A8.5 | DOOR SCHEDULE | | | | | |
| A8.6 | DOOR SCHEDULE | | | | | |
| A8.7 | DOOR SCHEDULE | | | | | |
| A8.8 | DOOR SCHEDULE | | | | | |
| A8.9 | DOOR SCHEDULE | | | | | |



**CITY OF KELOWNA
BYLAW NO. 9727**

**Housing Agreement Authorization Bylaw – Cerco Developments Ltd.
955-1005 Leon Avenue**

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

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

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

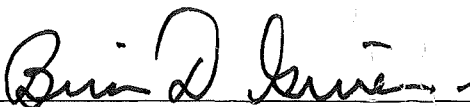
Lot A, District Lot 138, ODYD, Plan KAP82339

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

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

Read a first, second and third time by the Municipal Council this 29th day of January, 2007.

Adopted by the Municipal Council of the City of Kelowna this 1st day of May, 2007.



Mayor



City Clerk

15 AUG 2007 13

46

LB097655

COPY

LOCAL GOVERNMENT ACT

(Part 26)

NOTICE OF HOUSING AGREEMENT

To: Registrar of Titles

TAKE NOTICE THAT the land described below is subject to a housing agreement with the City of Kelowna

PARTICULARS OF HOUSING AGREEMENT

Description:

- | | | |
|-----|---------------------|-------------------|
| (a) | Type of Notice: | Housing Agreement |
| (b) | Bylaw No. | 9727 |
| (c) | Statutory Authority | s. 905(5) |

Legal Description of Land Affected:

PARCEL IDENTIFIER: 026-867-770
Lot A, District Lot 138, ODYD, Plan KAP82339

Agreement Date:

Dated

May 3, 2007

CITY OF KELOWNA

By:

Allison M. Plack
City Clerk

LAND TITLE ACT
FORM C

(Section 219.81)

Province of British Columbia

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

Page 1 of 13 pages

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

City of Kelowna
1435 Water Street
Kelowna, BC V1Y 1J4
(250) 469-8610
signature of applicant, applicant's solicitor or agent

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

(PID)

026-867-770

(LEGAL DESCRIPTION)

LOT A, DISTRICT LOT 138, O.D.Y.D., PLAN KAP82339

3. NATURE OF INTEREST:*

DESCRIPTION

DOCUMENT REFERENCE

PERSON ENTITLED TO
INTEREST

Section 219 Covenant

Entire Document

Transferee

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

(a) Filed Standard Charge Terms

(b) Express Charge Terms

(c) Release

D.F. No.

☒ Annexed as Part 2☐ There is no Part 2 of this instrument

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):*

CERCO DEVELOPMENTS LTD. (Incorporation No. BC0680153)

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

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

7. ADDITIONAL OR MODIFIED TERMS:*

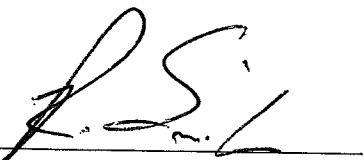
N/A

8. EXECUTION(S):** This instrument creates, assigns, modifies, enlarges, discharges or governs the priority of the interest(s) described in Item 3 and the Transferor(s) and every other signatory agree to be bound by this instrument, and acknowledge(s) receipt of a true copy of the filed standard charge terms, if any.

Officer Signature(s)

Execution Date

Party(ies) Signature(s)

CERCO DEVELOPMENTS LTD., by its
authorized signatory(ies)
RYAN WILLIAM SMITH

| | | |
|----|----|----|
| Y | M | D |
| 07 | 08 | 09 |

PRINT NAME:

CARLO DISTEFANO

A COMMISSIONER FOR TAKING
AFFIDAVITS WITHIN BRITISH COLUMBIA
OFFICER OF THE LAND TITLE ACT, KELOWNA, BC V1Y 1J4

Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the Evidence Act, R.S.B.C. 1979, C.116, to take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the Land Title Act as they pertain to the execution of this instrument.

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

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

LAND TITLE ACT
FORM E

SCHEDULE

Page 2 of 13 pages

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

Officer Signature(s)

Execution Date

Party(ies) Signature(s)

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

AS TO BOTH SIGNATURES

| Y | M | D |
|----|----|----|
| 07 | 08 | 14 |

CITY OF KELOWNA by its authorized
signatories:

Sharon Shepherd
SHARON SHEPHERD, MAYOR
Stephen Fleming
City Clerk
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.

PART 2 - TERMS OF INSTRUMENT

SECTION 219 COVENANT AND HOUSING AGREEMENT

THIS AGREEMENT dated for reference _____, 2007 is

BETWEEN:

CERCO DEVELOPMENTS LTD. (Incorporation No. BC0680153)
7209 Railway St. S.E.
Calgary AB T2H 2V6

("Owner")

AND:

CITY OF KELOWNA,
a Municipal Corporation having Offices at:
1435 Water Street,
Kelowna, B.C.
V1Y 1J4

("City")

GIVEN THAT:

- A. The Owner has applied to the City for rezoning of the Lands to permit the construction of a housing complex that will include some affordable rental housing units, in accordance with the City's definitions, on certain lands more particularly described in this Agreement;
- B. Section 219 of the *Land Title Act* permits the registration of a covenant of a negative or positive nature in favour of the City in respect of the use of land or construction on land;
- C. The City may, pursuant to section 905(1) of the *Local Government Act*, enter into an agreement with an owner of land that includes terms and conditions regarding the occupancy, tenure, and availability of the housing units on the land or construction on land;
- D. The Owner and the City wish to enter into this Agreement to provide for affordable rental and/or special needs housing on the terms and conditions set out in this Agreement, and agree that this agreement is both a section 219 covenant under the *Land Title Act* and a housing agreement under s. 905 of the *Local Government Act*; and
- E. The City has, by bylaw, authorized the execution of this Agreement and the Owner has duly authorized the execution of this Agreement;

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

ARTICLE 1 INTERPRETATION

1.1 Definitions -

"Affordable Rental" is the affordable rental rate published periodically by the City, being a calculation of average rents for Kelowna, using data from the annual Canada Mortgage and Housing Corporation ("CMHC") Rental Market Report as set out in Schedule "B";

"Affordable Rental Unit" means a Unit that is available for rent at an Affordable Rental rate;

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

"City" means the City of Kelowna;

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

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

"Household" means

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

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

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

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

"Maximum Allowable Income" means, in respect of an Affordable Rental Dwelling Unit, the threshold income level calculated according to the formula set out in Schedule "B";

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

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

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

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

"Tenancy Agreement" means a tenancy agreement as defined in, and subject to, the *Residential Tenancy Act*; and

"Tenant" means a Household occupying an Affordable Rental Dwelling Unit pursuant to a Tenancy Agreement, and that has a Gross Annual Income equal to or lesser than the Maximum Allowable Income.

1.2 Interpretation - In this Agreement:

- (a) reference to the singular includes a reference to the plural, and vice versa, unless the context requires otherwise;
- (b) article and section headings have been inserted for ease of reference only and are not to be used in interpreting this Agreement;
- (c) reference to a particular numbered section or article, or to a particular lettered Schedule, is a reference to the correspondingly numbered or lettered article, section or Schedule of this Agreement;
- (d) if a word or expression is defined in this Agreement, other parts of speech and grammatical forms of the same word or expression have corresponding meanings;
- (e) the word "enactment" has the meaning given in the *Interpretation Act* on the reference date of this Agreement;
- (f) reference to any enactment includes any regulations, orders or directives made under the authority of that enactment;
- (g) reference to any enactment is a reference to that enactment as consolidated, revised, amended, re-enacted or replaced, unless otherwise expressly provided;
- (h) the provisions of s. 25 of the *Interpretation Act* with respect to the calculation of time apply;
- (i) time is of the essence;
- (j) all provisions are to be interpreted as always speaking;
- (k) reference to a "party" is a reference to a party to this Agreement and to their respective successors, assigns, trustees, administrators and receivers;

- (l) reference to a "day", "month", "quarter" or "year" is a reference to a calendar day, calendar month, calendar quarter or calendar year, as the case may be, unless otherwise expressly provided;
- (m) the definitions given in the City of Kelowna Zoning Bylaw No. 8000, or its successor bylaw, and the Official Community Plan apply for the purposes of this Agreement; and
- (n) any act, decision, determination, consideration, consent or exercise of discretion by a party, or other person, as provided in this Agreement must be performed, made or exercised acting reasonably.

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

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

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

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

- (a) The Land must be used only in accordance with this Agreement;
- (b) The Owner will design, construct and maintain a maximum of 144 residential units at a density of 1.355 (floor area ratio) on the Land.
- (c) The number of Affordable Rental Dwelling Units constructed by the Owner shall be 7, being 4.9 percent of the total number of residential units in the development;
- (d) The number of Special Needs Dwelling Units constructed by the owner on the Land shall be 0, being 0% of the total number of residential units on the Land; and
- (e) The Owner acknowledges that the registration of this Affordable Housing Agreement will allow the City to grant a density bonus of 0.10.

**ARTICLE 3
HOUSING AGREEMENT AND TRANSFER RESTRICTIONS**

3.0 Purchaser Qualifications - The City and the Owner agree as follows:

- (a) the Owner must not sell or transfer, or agree to sell or transfer, any interest in any building containing an Affordable Rental Dwelling Unit other than a full interest in the fee simple title to an agency or individual that will continue to ensure that the identified affordable rental dwelling unit(s) are available in accordance with this agreement.

ARTICLE 4 AFFORDABLE RENTAL UNITS

4.0 Use and Occupancy For Affordable Rental Dwelling Unit - The Owner agrees with the City as follows:

- (a) the Owner must rent or lease the Affordable Rental Dwelling Unit(s) on the Land only to a Tenant whose Household has a Gross Annual Income equal to or lesser than the Maximum Allowable Income, on a month-to-month basis or by a lease agreement not to exceed three years, including any rights of renewal;
- (b) the rent payable for a Affordable Rental Unit must be calculated as set out in Schedule "B" to this agreement;
- (c) the Owner agrees that since the determination of Affordable Rental includes consideration, fees or charges for use of limited common property, utilities and other utility services, no further consideration, charges, or fees may be levied or collected by or on behalf of the Owner as part of the rent for a Affordable Rental Unit under this section for use of limited common property, sanitary sewer, storm sewer, or water utilities for or in respect of the Dwelling Unit or any fees or charges for gas or electrical utilities provided to the Dwelling Unit;
- (d) the Owner must specify in every Tenancy Agreement the existence of this Agreement and the occupancy restrictions applicable to the Dwelling Unit, and attach a copy of this Agreement to every Tenancy Agreement;
- (e) the Owner will deliver a copy of the Tenancy Agreement to the City upon demand; and
- (f) the Owner will terminate any Tenancy Agreement where the Tenant users or occupies, or allows the use or occupation of the Dwelling Unit in breach of this Agreement, such termination to be in accordance with the terms of the Tenancy Agreement and the *Residential Tenancy Act* (British Columbia).

4.1 Prospective Tenants - The Owner will be solely responsible for screening prospective Tenants to determine whether or not they qualify for Affordable Rental and whether or not their households have Gross Annual Incomes equal to or lesser than the Maximum Allowable Income, in accordance with this Agreement,. For greater certainty, the Owner agrees that the City is not responsible for, and makes no representation to the Owner regarding, the suitability of any prospective Tenant.

4.2 Damages and Rent Charge - The Owner agrees with the City as follows:

- (a) **Rental Restriction** - the Gross Annual Income of all individuals who occupy the Affordable Rental Unit must not exceed the amount set out in Schedule "B" to this Agreement;
- (b) **Damages for Breach** - for each day an Affordable Rental Dwelling Unit is occupied in breach of this Agreement, the Owner must pay the City \$100.00 for each day on which the breach has occurred, as liquidated damages and not as a penalty, due and payable at the offices of the City on the last day of the calendar month in which the breach occurred, but the City agrees that this section applies only if the City has given 60 days' written notice to the Owner of occupancy of the Affordable Rental Dwelling Unit in breach of this Agreement and the Owner has not cured that breach before expiry of that 60 days;
- (c) **Statutory Declaration** - When making an application for a business license or a renewal of a business license pursuant to the City's Business License Bylaw No. 7878, or its successor, the Owner must deliver to the City a statutory declaration, substantially in the form attached as Schedule A, sworn by the Owner,

or a knowledgeable director, officer or employee of any corporate Owner, under oath before a commissioner for taking affidavits in British Columbia, containing all of the information required to complete the statutory declaration. Additionally, the City may request the Owner deliver to the City such a statutory declaration no more than four times in any year. The Owner must submit such a statutory declaration a minimum of once a year; and

- (d) **Tenant Income Tax Information** - By June 1st of each year an Affordable Rental Dwelling Unit is occupied, the Owner will send the [officer position] of the City the most recent income tax return information for the Household that occupies that unit. Should a Tenant object to giving his or her Household's income tax return information to the Owner, the Tenant may send it directly to the [officer position] of the City.

ARTICLE 5 SPECIAL NEEDS UNITS

- 5.1 Minimum Number of Special Needs Occupants** - The Owner agrees with the City that a Special Needs Unit must be occupied by a Household with at least one Special Needs Individual.
- 5.2 Damages for Breach** - For each day a Special Needs Unit is occupied in breach of this Agreement, the Owner must pay the City \$100.00 for each day on which the breach has occurred, as liquidated damages and not as a penalty, due and payable at the offices of the City on the last day of the calendar month in which the breach occurred, but the City agrees that this section applies only if the City has given 60 days' written notice to the Owner of occupancy of the Special Needs Unit in breach of this Agreement and the Owner has not cured that breach before expiry of that 60 days.
- 5.3 Statutory Declaration** - Within five days after receiving notice from the City, the Owner must deliver to the City a statutory declaration, substantially in the form attached as Schedule A, sworn by the Owner, or a knowledgeable director, officer or employee of any corporate Owner, under oath before a commissioner for taking Affidavits in British Columbia, containing all of the information required to complete the statutory declaration. The City may request such a statutory declaration no more than four times in any year.

ARTICLE 6 GENERAL

- 6.1 Notice of Housing Agreement** - For clarity, the Owner acknowledges and agrees that:
- (a) this Agreement constitutes both a covenant under s. 219 of the *Land Title Act* and a housing agreement entered into under s. 905 of the *Local Government Act*;
 - (b) the City is requiring the Owner to file a notice of housing agreement in the LTO against title to the Land; and
 - (c) once such a notice is filed, this Agreement binds all persons who acquire an interest in the Land.
- 6.2 No Effect On Laws or Powers** - This Agreement does not
- (a) affect or limit the discretion, rights, duties or powers of the City under any enactment or at common law, including in relation to the use or subdivision of land,
 - (b) impose on the City any legal duty or obligation, including any duty of care or contractual or other legal duty or obligation, to enforce this Agreement,

- (c) affect or limit any enactment relating to the use or subdivision of land, or
- (d) relieve the Owner from complying with any enactment, including in relation to the use or subdivision of land.

6.3 Management – The Owner covenants and agrees that it will furnish good and efficient management of the Dwelling Units and will permit representatives of the City to inspect the Dwelling Units at any reasonable time, subject to the notice provisions of the *Residential Tenancy Act*. The Owner further covenants and agrees that it will maintain the Dwelling Units in a satisfactory state of repair and fit for habitation and will comply with all laws, including health and safety standards applicable to the Land. Notwithstanding the foregoing, the Owner acknowledges and agrees that the City, in its absolute discretion, may require the Owner, at the Owner's expense, to hire a person or company with the skill and expertise to manage the Dwelling Units.

6.4 Notice - Any notice which may be or is required to be given under this Agreement must be in writing and either be delivered or sent by facsimile transmission. Any notice which is delivered is to be considered to have been given on the first day after it is dispatched for delivery. Any notice which is sent by fax transmission is to be considered to have been given on the first business day after it is sent. If a party changes its address or facsimile number, or both, it must promptly give notice of its new address or facsimile number, or both, to the other party as provided in this section.

6.5 Covenant Runs With the Land - Every obligation and covenant of the Owner in this Agreement constitutes both a contractual obligation and a covenant granted by the Owner to the City in accordance with section 219 of the *Land Title Act* in respect of the Land and this Agreement burdens the Land and runs with it and binds the Owner's successors in title and binds every parcel into which it is consolidated or subdivided by any means, including by subdivision or by strata plan under the *Strata Property Act*.

6.6 Limitation on Owner's Obligations - The Owner is only liable for breaches of this Agreement that occur while the Owner is the registered owner of the Land.

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

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

6.9 Waiver - An alleged waiver of any breach of this Agreement is effective only if it is an express waiver in writing of the breach. A waiver of a breach of this Agreement does not operate as a waiver of any other breach of this Agreement.

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

6.11 Severance - If any part of this Agreement is held to be invalid, illegal or unenforceable by a court having the jurisdiction to do so, that part is to be considered to have been severed from the rest of this Agreement and the rest of this Agreement remains in force unaffected by that holding or by the severance of that part.

6.12 – Equitable Remedies – The Owner acknowledges and agrees that damages would be an inadequate remedy for the City for breach of this Agreement and that the public interest strongly favours specific performance, injunctive relief (mandatory or otherwise), or other equitable relief, as the only adequate remedy for a default under this Agreement.

6.13 No Other Agreements - This Agreement is the entire agreement between the parties regarding its subject and it terminates and supersedes all other agreements and arrangements regarding its subject.

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

6.15 Priority - The Owner agrees to do everything necessary at the Owner's expense to ensure that this Agreement, and each subsequent section 219 covenant contemplated by section 2 are registered against title to the Land with priority over all financial charges, liens and encumbrances registered or pending at the time of application for registration of these agreements.

6.16 Enurement - This Agreement binds the parties to it and their respective successors, heirs, executors and administrators. Reference in this Agreement to the "City" is a reference also to the elected and appointed officials, employees and agents of the City.

6.17 Deed and Contract - By executing and delivering this Agreement each of the parties intends to create both a contract and a deed executed and delivered under seal.

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

SCHEDULE A
[AFFORDABLE RENTAL UNITS]

| | | |
|------------------------------|---|---|
| CANADA |) | IN THE MATTER OF A HOUSING |
| |) | AGREEMENT WITH THE CITY OF |
| PROVINCE OF BRITISH COLUMBIA |) | KELOWNA ("Housing Agreement") for the |
| |) | land legally described as LOT A, DISTRICT |
| |) | LOT 138, O.D.Y.D., PLAN KAP82339 |
| |) | |
| |) | |
| |) | |
| |) | |

I, _____, of _____, do solemnly declare:

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

LOT A, DISTRICT LOT 138, O.D.Y.D., PLAN KAP82339 - 955-1005 Leon Ave.

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

[or]

That I am the _____ [director, officer, employee] of the Owner of the Unit and [make this declaration to the best of my personal knowledge] [or: have been informed by _____ and believe the statements in this declaration to be true].

3. This declaration is made pursuant to the Housing Agreement in respect of the Unit.
4. The average affordable rent for Kelowna from the most recent annual Canada Mortgage and Housing Corporation (CMHC) Rental Market Report for an apartment of the Unit's size is \$_____ per month, including the cost of heat, water, and electricity;
5. The rent charged each month for the Unit is as follows:
 - (a) the monthly rent on the date 365 days before the date of this statutory declaration was \$____ per month;
 - (b) the monthly rent on the date of this statutory declaration is: \$_____; and
 - (c) the proposed or actual monthly rent that will be payable on the date that is 90 days after the date of this statutory declaration is \$_____.
6. For the period from _____, _____ to _____, _____ the Unit was occupied by the following persons, whose names and addresses appear below, and in accordance with the Housing Agreement:

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

8. The gross annual income of all individuals aged 15 and over who reside in the Unit is equal to or less than the maximum allowable income \$_____, being the average affordable rent set out in Clause 4 above multiplied by 40
9. I make this solemn declaration conscientiously believing it to be true and knowing that it is of the same force and effect as if made under oath and pursuant to the *Canada Evidence Act*.

SWORN BEFORE ME at the City of _____
_____, in _____ the
_____, this ___ day of _____
_____, ____.

)
)
)
)
)
)
)
)
)
)

Signature of person making declaration

A Commissioner for taking affidavits for
British Columbia

SCHEDULE B
[AFFORDABLE RENTAL CALCULATIONS]

The "Affordable Rental" rate is based on the premise that households that spend 30% of their income on basic shelter costs to afford rents equivalent to the average rents published annually by Canada Mortgage and Housing Corporation (CMHC) for Kelowna are facing a housing shortage. This is the direction behind the City of Kelowna Official Community Plan, Bylaw 7600 (policy 8.1.16). This Housing Agreement is a method of creating affordable housing for such households.

The City of Kelowna will publish the Average Monthly Rents for different sizes of Affordable Rental Dwelling Units periodically, which will be the average rents for Kelowna from the annual CMHC Rental Market Report.

The Owner may not permit a Household whose Gross Annual Income is greater than the Maximum Annual Income, as calculated according to the formula below, to occupy an Affordable Rental Dwelling Unit. Gross Annual Income is aggregated taxable income (line 260 of income tax T1 General Form) of all residents 15 years and older residing in the Dwelling Unit. The Maximum Allowable Income is calculated based on the Dwelling Unit size by number of bedrooms that the Household rents. Rent, for affordability purposes, must include heat, electricity and water.

The formula to calculate the Maximum Annual Income permitted for a Household to occupy an Affordable Rental Dwelling Unit is as follows:

$$\text{Maximum Annual Income} = \text{Average Monthly Rent (CMHC)} \times 40$$

This is an abbreviated version of:

$$(\text{Maximum Annual Income} \times 30\%) = (\text{Average Monthly Rent} \times 12 \text{ months})$$

SAMPLE:

Average Monthly Rents of All Private Apartments in the City of Kelowna, 2006
(Canada Mortgage and Housing Corporation Market Rental Survey- City of Kelowna)

| | Bachelor | One Bedroom | Two Bedroom | Three Bedroom + |
|----------------------|----------|-------------|-------------|-----------------|
| Average Monthly Rent | \$524 | \$661 | \$800 | \$834 |

The Maximum Annual Income Calculations for 2006:

1 Bedroom Unit

$$\text{Maximum Annual Income} = \$661 \times 40 = \$26,440$$

2 Bedroom Unit

$$\text{Maximum annual income} = \$800 \times 40 = \$32,000$$

3 Bedroom Unit

$$\text{Maximum annual income} = \$834 \times 40 = \$33,360$$

END OF DOCUMENT