

DISTRICT OF SEHELDT

Walter Burtnick Seniors Lodge Housing Agreement Bylaw No. 470, 2007

A bylaw to enter into a housing agreement under section 905 of the Local Government Act

WHEREAS

- A. The owner of the lands wishes to rezone and develop lands in the District of Sechelt and in connection with that development has agreed to contributions for affordable housing, which Lands are legally described as follows:

PID: 007-230-516 Lot B District Lot 1331 Plan 18108

- B. The District wishes to enter into a housing agreement in order to secure use two (2) Affordable Housing Units and a Cash Contribution to assist in the development of affordable housing.

NOW THEREFORE the Council of the District of Sechelt, in open meeting assembled, enacts as follows:

TITLE

This Bylaw may be cited for all purposes as “Walter Burtnick Seniors Lodge Housing Agreement Bylaw No. 470, 2007”.

BYLAW

By this Bylaw, Council authorizes the District to enter into a housing agreement with 754529 BC LTD in respect of the following land:

PID: 007-230-516 Lot B District Lot 1331 Plan 18108

in the form of housing agreement attached as Schedule “A” to this Bylaw.

The Mayor and the Administrator of the District are authorized to execute the housing agreements and the Administrator is authorized to sign and file in the Land Title Office notices of the housing agreements, as required by the *Local Government Act*

READ A FIRST TIME THIS	16th	DAY OF	January,	2009
READ A SECOND TIME THIS	6 th	DAY OF	February	2009.
READ A THIRD TIME THIS	6 th	DAY OF	February	2009.
ADOPTED THIS	20 th	DAY OF	February	2009.

Mayor

Corporate Officer

I certify this to be a true and accurate copy of
District of Sechelt Bylaw 470, 2007
"Walter Burtnick Seniors Lodge Housing Agreement Bylaw".

Corporate Officer

3

Schedule A

Housing Agreement

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 10 Pages

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

Applicant's Solicitor

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

(PID) (LEGAL DESCRIPTION)

007-230-516 Lot B District Lot 1331 Plan 18108

3. NATURE OF INTEREST:*

Description

Document Reference Person Entitled to Interest
(page and paragraph)

Section 219 Covenant and Housing Agreement (s. 905 *Local Government Act*) Entire Document Transferee

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

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

A selection of (a) include 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):*

754529 BC LTD

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

DISTRICT OF SECHELT, P.O. Box 129, Sechelt, BC V0N 3A0

LAND TITLE ACT

FORM C
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Province of British Columbia

GENERAL INSTRUMENT -PART 1

Page 2

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 file standard charge terms, if any.

Officer Signature

Execution Date

Transferor Signature

Y M D

Name of Officer

2008 ____ ____

754529 BC LTD

by its authorized signatory(ies):

President: Dale Allenback

Transferee Signature

Name of Officer

2008 ____ ____

DISTRICT OF SECHELT by its authorized signatories:

Mayor: Cameron Reid

(as to both signatures)

Corporate Officer:
Jo-Anne Frank

TERMS OF INSTRUMENT - PART 2
SECTION 219 COVENANT AND HOUSING AGREEMENT

THIS AGREEMENT dated for reference the ___ day of _____, 2008

BETWEEN:

754529 BC LTD having an office at 1491 Russell Road, Gibsons, BC, V0N 1V2

("Owner")

AND:

DISTRICT OF SECHELT, a municipal corporation pursuant to the laws of British Columbia and having a postal address at PO Box 129, Sechelt, BC, V0N 3A0

("Municipality")

GIVEN THAT:

- A. The Owner is the registered owner in fee simple of the lands in the District of Sechelt legally described in Item 2 of Part 1 of the *Land Title Act* Form C to which this Agreement is attached and which forms part of this Agreement (the "Lands");
- B. The Owner has applied to the Municipality for a Zoning Bylaw Amendment for the construction of a multi-family seniors' housing complex on the Lands, more particularly described in this Agreement;
- C. Section 219 of the *Land Title Act* permits the registration of a covenant of a negative or positive nature in favour of the Municipality in respect of the use of land, construction on land or the subdivision of land;
- D. Section 905 of the *Local Government Act* permits the Municipality by bylaw to enter into a housing agreement with an owner of land, which agreement may include terms and conditions regarding the occupancy, tenure, and availability of dwelling units located on the lands of the Owner; and
- E. The Owner and the Municipality wish to enter into this Agreement to secure affordable housing contributions in exchange for requested rezoning of the Lands to a higher density. Specifically, this involves the transfer of ownership of two (2) two-bedroom Community Amenity Units and a Cash Contribution of \$ 750,000 to the District of Sechelt to assist in the provision and development of affordable housing, on the terms and conditions set out in this Agreement, and both parties agree that this agreement is both a Section 219 covenant under the *Land Title Act* and a housing agreement under section 905 of the *Local Government Act*.

This Agreement is evidence that in consideration of \$1.00 paid by the Municipality to the Owner (the receipt of which is acknowledged by the Owner), the Owner covenants and agrees with the Municipality, in accordance with section 219 of the *Land Title Act*, as follows:

ARTICLE 1 - INTERPRETATION

1.1 Definitions

In this Agreement:

- (a) “Community Amenity Unit” means a Dwelling Unit on the Lands, containing two separate bedrooms, unfurnished but including fridge, stove and microwave;
- (b) “Cash Contribution” means monies paid by the owner to the District of Sechelt into the affordable housing fund;
- (c) “Consumer Price Index” means the All-items Consumer Price Index for Vancouver, as compiled and published by Statistics Canada or its successor, where January 2008 =100;
- (d) “Dwelling Unit” means a room or set of rooms containing cooking and sanitary facilities and designed to be used for residential occupancy by one or more persons;
- (e) “LTO” means the New Westminster Land Title Office;
- (f) “Municipality” means the District of Sechelt; and
- (g) “Owner” means the Transferor described in the Form C to which this Agreement is attached, and any subsequent owner of the Lands;
- (h) “Subdivide” means to divide, apportion, consolidate or subdivide the Lands, or the ownership or right to possession or occupation of the Lands into two or more lots, strata lots, parcels, parts, portions or shares, whether by plan, descriptive words or otherwise, under the *Land Title Act*, the *Strata Property Act* or otherwise, and includes the creation, conversion, organization or development of “cooperative units” or “shared interests in land” as defined in the *Real Estate Act*.

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) 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;

- (c) article and section headings have been inserted for ease of reference only and are not to be used in interpreting this Agreement;
- (d) the word “enactment” has the meaning given to it in the *Interpretation Act* (British Columbia) on the reference date of this Agreement;
- (e) reference to any enactment is a reference to that enactment as consolidated, revised, amended, re-enacted or replaced, unless otherwise expressly provided;
- (f) reference to a “party” or the “parties” is a reference to a party, or the parties, to this Agreement and their respective successors, assigns, trustees, administrators and receivers; and
- (g) reference to a “day,” “month,” or “year” is a reference to a calendar day, calendar month, or calendar year unless otherwise expressly provided.

ARTICLE 2 - HOUSING AGREEMENT AND DEVELOPMENT RESTRICTIONS

2.1 No Development

The Owner covenants and agrees with the Municipality that the Lands must not be used, and that development of the Lands, including by construction or placement of any building or structure on the Lands is prohibited, unless as part of the development of the Lands, the Owner:

- (a) designs and constructs to completion, in accordance with a building permit issued by the Municipality two (2) Community Amenity Units as specified in this Agreement, which must be constructed and finished to the same standard of all other Dwelling Units on the Lands.
- (b) provides a \$ 750,000 Cash Contribution as specified in this Agreement.

2.2 No Subdivision

The Land will not be Subdivided, except by registration in the LTO of a strata plan converting each residential dwelling unit within the development into strata lots, acceptable to the Municipality’s Director of Planning, in his sole discretion.

No building or structure on the Land may be occupied or used for any purpose until and unless the Land is Subdivided in the manner permitted by this section 2.2.

2.3 Determination of Community Amenity Units

At the time the Land is Subdivided in the manner permitted by section 2.2, the Owner will notify the Municipality as to which Dwelling Units in the development will be the Community Amenity Units, provided that the floor area of each Community Amenity Units will be at least equal to the median floor area of the other two-bedroom units within the Development.

2.4 Partial Discharge

If:

- (a) the Municipality has issued a building permit for all of the Community Amenity Units, and
- (b) the Owner is not in breach of any of its obligations under this agreement,

the Municipality will, at the request of the Owner and at the Owner's sole expense, execute and deliver to the Owner, discharges of this agreement in registrable form, discharging this agreement from title to each parcel (including strata lots) that does not contain an Community Amenity Unit.

2.5 Transfer of Ownership Community Amenity Units

Each Community Amenity Unit will be transferred to the Municipality at no cost after completion.

2.6 Use of Community Amenity Units

- (a) The Municipality covenants and agrees that the Community Amenity Units will be offered for staff housing for St. Mary's Hospital, in cooperation with the St. Mary's Hospital Foundation Society.
- (b) The Municipality covenants and agrees that the Community Amenity Units will be used for affordable housing purposes if the need for staff housing for St. Mary's Hospital ceases to exist.

2.7 Cash Contribution for Affordable Housing

The Owner agrees to pay the Municipality a one time Cash Contribution of \$ 750,000 as follows:

- (a) \$ 375,000 in cash is payable upon or within thirty (30) days of fourth reading and prior to issuance of any permits for development of the Lands. After payment of the contribution the Owner will be eligible for building permit(s) for the foundation of the whole building and for construction of the first Dwelling Units up to a total number of 100 units;
- (b) the balance in cash (375,000) is payable at issuance of the first building permit that results in the construction of any additional Dwelling Units (101st unit and up).

2.8 Indexing of Cash Contribution

If the building permit is issued after January 1st, 2010 the Cash Contribution will be indexed retroactively based on the Consumer Price Index where January 2008 = 100.

2.9 Use of Cash Contribution

- (a) The Municipality covenants and agrees that the Cash Contribution will be used to assist in the development of affordable housing per the municipal policies for affordable housing;
- (b) All or part of the Cash Contribution will be considered to be made available for the Sunshine Coast Senior Citizens Housing Society for their planned redevelopment of possibly 100-120 low-cost senior's housing located on 5583 Ocean Avenue in Sechelt;
- (c) After December 18, 2009 the Municipality is free to use the Cash Contribution for other affordable housing purposes per the municipal policies for affordable housing if the development mentioned under (b) is not approved by Council.

2.10 Order to Comply

- (a) If the Owner is in default of the performance or observance of this Agreement regarding the Community Amenity Units, the Municipality may give the Owner a notice of default requiring the Owner to comply with this Agreement within the time stated in the notice.
- (b) If the Owner is in default of the performance or observance of this Agreement regarding the Cash Contributions, the Municipality may give the Owner a notice of default requiring the Owner to comply with this Agreement within the time stated in the notice, and / or the Municipality may draw on the letter of credit to obtain the Cash Contribution.

2.11 Specific Performance of Agreement

The Owner agrees that the Municipality is entitled to obtain an order for specific performance of this Agreement and a prohibitory or mandatory injunction in respect of any breach by the Owner of this Agreement. Further, the Owner agrees that the foregoing provision is reasonable given the public interest in providing support for affordable housing in accordance with this Agreement.

2.12 Notice of Housing Agreement

For clarity, the Owner acknowledges and agrees that:

- (a) this Agreement constitutes both a covenant under section 219 of the *Land Title Act* and a housing agreement entered into under section 905 of the *Local Government Act*;
- (b) the Municipality is required to file a notice of housing agreement in the LTO against title to the Land; and
- (c) once such a notice is filed, this Agreement binds all persons who acquire an interest in the Land.

ARTICLE 3 – GENERAL

3.1 No Effect On Laws or Powers

This Agreement does not:

- (a) affect or limit the discretion, rights, duties or powers of the Municipality under any enactment or at common law, including in relation to the use or subdivision of the Lands;
- (b) impose on the Municipality 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 the Lands; or
- (d) relieve the Owner from complying with any enactment, including in relation to the use or subdivision of the Lands.

3.3 Notice

Any notice which may be or is required to be given under this Agreement must be in writing and either be delivered or sent by fax 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 fax number, or both, it must promptly give notice of its new address or fax number address, or both, to the other party as provided in this section.

3.4 Covenant Runs With the Land

Every obligation and covenant of the Owner in this Agreement constitutes both a contractual obligation and a covenant granted by the Owner to the Municipality in accordance with section 219 of the *Land Title Act* in respect of the Lands and this Agreement burdens the Lands and runs with them and binds the Owner's successors in title and binds every parcel into which they are consolidated or subdivided by any means, including by subdivision or by strata plan under the *Strata Property Act*.

3.5 Limitation on Owner's Obligations

The Owner is only liable for breaches of this Agreement that occur while the Owner is the registered owner of the Lands.

3.6 Waiver

No condoning, excusing or overlooking by the Municipality of any default under this Agreement, nor any consent, approval, or agreement whether written or otherwise will be taken to operate as a waiver by the Municipality of any subsequent default or of the necessity for further consent, approval or agreement in respect of a subsequent matter requiring it under this Agreement, or in any way to defeat or affect the rights or remedies of the Municipality

3.7 Further Acts

The Owner will do everything reasonably necessary to give effect to the intent of this Agreement, including execution of further instruments.

3.8 Severance

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

3.9 No Other Agreements

This Agreement is the entire agreement between the parties regarding its subject and it terminates and supersedes all other agreements and arrangements regarding its subject.

3.10 Amendment

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

3.11 Enurement

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

3.12 Amendment and Termination

This Agreement may not be modified or amended except by bylaw of the Municipality, upon an agreement in writing between the Municipality and the Owner. This Agreement may be terminated or discharged by the Municipality without the consent or agreement of the Owner.

3.13 Joint Venture

Nothing in this Agreement will constitute the Owner as an agent, joint venturer or partner of the Municipality or give the Owner any authority or power to bind the Municipality in any way.

3.14 Priority

The Owner agrees to do everything necessary at the Owner's expense to ensure that this Agreement is registered against title to the Lands with priority over all financial charges, liens, and encumbrances registered or pending at the time of application for registration of this Agreement.

3.15 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.