

# CITY OF KELOWNA

## BYLAW NO. 8891

### Housing Agreement Authorization Bylaw – Okanagan Families Society – Cadder Avenue

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

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

1. The Municipal Council hereby authorizes the City of Kelowna to enter into a Housing Agreement with the Okanagan Families Society for the lands known as Lot 4 District Lot 14 ODYD Plan 635 located on Cadder 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 12<sup>th</sup> day of August, 2002

Adopted by the Municipal Council of the City of Kelowna this

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Mayor

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City Clerk

**PART 2 - TERMS OF INSTRUMENT**

**SECTION 219 COVENANT**

THIS AGREEMENT dated for reference \_\_\_\_\_, 2002 is

**BETWEEN:**

Okanagan Families Society  
1829 Chandler Street  
Kelowna, BC V1Y 3Z2

("Owner")

**AND:**

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

("City")

**GIVEN THAT:**

A. Section 219 of the *Land Title Act* permits the registration of a covenant of a negative or positive nature in favour of the City in respect of the use of land or construction on land;

B. The Owner and the City wish to enter into this Agreement to provide for 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*,

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

## ARTICLE 1 INTERPRETATION

### 1.1 Definitions -

- (a) "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;
- (b) "City" means the City of Kelowna;
- (c) "Dwelling Unit" means one or more rooms that are designed, occupied or intended for occupancy as a separate living space (with cooking, sleeping and sanitary facilities located within that space) for the exclusive residential use of a single domestic unit;
- (d) "Land" means the land described in Item 2 of the Form C to which this Agreement is attached;
- (e) "LTO" means the Kamloops Land Title Office or its successor;
- (f) "Owner" means the registered owner of the Land; and
- (g) "Special Needs Individual" means an individual who, by reason of a physical or mental disability, has special needs respecting the design and construction of the Dwelling Unit occupied by that individual, including any individual who is confined to a wheelchair;
- (h) "Zoning Bylaw" means *City of Kelowna Bylaw No. 8000*.

### 1.2 Interpretation - In this Agreement:

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

- (i) time is of the essence;
- (j) all provisions are to be interpreted as always speaking;
- (k) reference to a "party" is a reference to a party to this Agreement and to their respective successors, assigns, trustees, administrators and receivers;
- (l) reference to a "day", "month", "quarter" or "year" is a reference to a calendar day, calendar month, calendar quarter or calendar year, as the case may be, unless otherwise expressly provided;
- (m) the definitions given in the Zoning Bylaw apply for the purposes of this Agreement; and
- (n) any act, decision, determination, consideration, consent or exercise of discretion by a party, or other person, as provided in this Agreement must be performed, made or exercised acting reasonably.

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

- (a) this Agreement is intended to serve the public interest by providing for occupancy of a certain number of Dwelling Units, of the kinds provided for in this Agreement, that are in demand in the City of Kelowna but that are not readily available;
- (b) performance of this Agreement by the Owner is a condition, as contemplated by s. 904 of the *Local Government Act*, of the Owner becoming entitled to increase the number of residents including boarders, who are not related by blood, marriage, or adoption, or associated through foster care from a group of not more than five persons, to not more than 6 residents with physical, mental, social, or behavioural problems that require professional care, guidance and supervision and a maximum of four, any combination of staff and residents not requiring care; which the Owner acknowledges are a benefit to the Owner; and
- (c) damages are not an adequate remedy to the City in respect of any breach of this Agreement by the Owner, such that the Owner agrees the City should be entitled to an order for specific performance, injunction or other specific relief respecting any breach of this Agreement by the Owner.

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

2.1 The Owner agrees with the City that:

- (a) the Land must be used only in accordance with this Agreement; and
- (b) the Land must be used only for the construction, use and occupation of Special Needs housing.

2.2 **Minimum Number of Special Needs Occupants** - The Owner agrees with the City that a Special Needs Unit must be occupied by at least one Special Needs Individual. For clarity, nothing in this Agreement prevents another individual from residing in a Special Needs Unit along with a Special Needs Individual including where the other individual is a Caregiver for the Special Needs Individual.

- 2.3 **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 3 GENERAL

- 3.1 **Notice of Housing Agreement** - For clarity, the Owner acknowledges and agrees that:

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

- 3.2 **No Effect On Laws or Powers** - This Agreement does not

- (a) affect or limit the discretion, rights, duties or powers of the City under any enactment or at common law, including in relation to the use or subdivision of land,
- (b) impose on the City any legal duty or obligation, including any duty of care or contractual or other legal duty or obligation, to enforce this Agreement,
- (c) affect or limit any enactment relating to the use or subdivision of land, or
- (d) relieve the Owner from complying with any enactment, including in relation to the use or subdivision of land.

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

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

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

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

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

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

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

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

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

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

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

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

Approving Officer \_\_\_\_\_  
City of Kelowna

IN WITNESS WHEREOF the parties have executed this Agreement on the date shown on the first page of this agreement.

**Okanagan Families Society**

by its authorized signatory(ies):

\_\_\_\_\_  
Authorized Signatory

Print Name: \_\_\_\_\_)

\_\_\_\_\_  
Authorized Signatory

Print Name: \_\_\_\_\_)

**CITY OF KELOWNA**

by its authorized signatory(ies):

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Clerk

**SCHEDULE A**

CANADA )  
PROVINCE OF BRITISH COLUMBIA )  
 )  
 )  
 )  
 )

IN THE MATTER OF A HOUSING AGREEMENT WITH THE CITY OF KELOWNA ("Housing Agreement")

I, \_\_\_\_\_, of \_\_\_\_\_, do solemnly declare:

- 1. This declaration is made with respect to the Dwelling Unit ("Unit") legally or otherwise described as follows:  
[INSERT LEGAL DESCRIPTION AND CIVIC ADDRESS].
- 2. That I am the Owner of the Unit and make this declaration to the best of my personal knowledge.

[or]

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

- 3. This declaration is made pursuant to the Housing Agreement in respect of the Unit.
- 4. The name of the Special Needs Individual occupying the Unit is:  
[INSERT NAME OF SPECIAL NEEDS INDIVIDUAL].
- 5. The names of all of the individuals who reside in the Unit are as follows:  
[INSERT NAMES OF ALL OCCUPANTS].
- 6. 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 \_\_\_\_\_ )  
\_\_\_\_\_, \_\_\_\_\_. )  
 )  
 )  
 )  
A Commissioner for taking affidavits for British Columbia )

\_\_\_\_\_  
**Signature of person making declaration**



## GRANT OF PRIORITY

### GIVEN THAT:

A. The Owner (as defined in the s. 219 covenant to which this Agreement is attached) ("Housing Agreement") is the registered owner of the land legally described in Item 2 of Part 1 of the *Land Title Act* Form C ("Land");

B. The Owner granted \_\_\_\_\_ ("Prior Chargeholder") a mortgage which is registered against the title to the Land in the \_\_\_\_\_ Land Title Office ("LTO") under number \_\_\_\_\_ ("Prior Charge");

C. By the Housing Agreement, the Owner granted to the City of Kelowna ("Subsequent Chargeholder") a S. 219 covenant, as described in the Housing Agreement, and a rent charge (collectively, "Subsequent Charge"); and

D. The *Land Title Act* permits the Prior Chargeholder to grant priority over a charge to a subsequent chargeholder,

This Priority Agreement is evidence that, in consideration of \$2.00 paid by the Subsequent Chargeholder to the Prior Chargeholder (the receipt and sufficiency of which are hereby acknowledged), the Prior Chargeholder grants to the Subsequent Chargeholder priority over the Prior Charge and the Prior Chargeholder covenants and agrees to subordinate and postpone all its right, title and interest in and to the Land with the intent and with the effect that the interests of the Subsequent Chargeholder in and under the Subsequent Charge are the same as if the Subsequent Charge had been executed, delivered and registered against the title to the Land before registration of the Prior Charge.

As evidence of their agreement to be bound by the above terms of this Priority Agreement, the party described in this Priority Agreement as the Prior Chargeholder has executed and delivered the *Land Title Act* Form C to which this Priority Agreement is attached and which forms part of this Priority Agreement.

END OF DOCUMENT