

CITY OF KELOWNA

BYLAW NO. 8802

Housing Agreement Authorization Bylaw – Provincial Rental Housing Corporation – Caramillo Court

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 Provincial Rental Housing Corporation for the lands known as Lot 9 Section 32 Township 26 ODYD Plan 58245 located on Caramillo Court, 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 11th day of February, 2002.

Adopted by the Municipal Council of the City of Kelowna this

Mayor

City Clerk

SCHEDULE "A"

LAND TITLE ACT

FORM C

(Section 233(1))

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)
 KERFOOT, CAMERON & COMPANY, Barristers & Solicitors, Trademark Agents
 300 - 5687 Yew Street, Vancouver, B.C. V6M 3Y2
 Phone: (604) 263-2565
 File Ref. No: 10044.66
 LTO Client No. 11012

Charlotte K. Wong, Authorized Agent

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

(PID) (LEGAL DESCRIPTION)

023-631-937 Lot 9 Section 32 Township 26 Osoyoos Division Yale District Plan KAP58245

3. NATURE OF INTEREST: * DOCUMENT REFERENCE PERSON ENTITLED TO INTEREST

DESCRIPTION

(page and paragraph)

Section 219 Covenant

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) 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):*

PROVINCIAL RENTAL HOUSING CORPORATION, (Incorporation No. 0052129), 601- 4555
 Kingsway, Burnaby, BC V5H 4V8

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

CITY OF KELOWNA, 1435 Water Street, Kelowna, British Columbia 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)

Y	M	D
2002		

CITY OF KELOWNA
 by its authorized signatory(ies)

Name:

Title:

Name:

Title:

(As to all signatures)




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 additional page(s) in Form D.

LAND TITLE ACT
FORM D
EXECUTIONS CONTINUED

Page 2

Officer Signature(s)	Execution Date	Transferor/Borrower/Party Signature(s)		
	Y	M	D	
	2002	1	14	PROVINCIAL RENTAL HOUSING CORPORATION by its authorized signatory(ies): 
CHARLOTTE K. WONG <i>Barrister & Solicitor</i> 300 - 5687 YEW STREET VANCOUVER, B.C. V6M 3Y2 (As to all Signatures) As to the signature of Peter Stobie	2002	1	14	Title:  Title CRAIG CRAWFORD

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.

PART 2 - TERMS OF INSTRUMENT

SECTION 219 COVENANT

THIS AGREEMENT dated for reference _____, 2001 is

BETWEEN:

PROVINCIAL RENTAL HOUSING CORPORATION
Suite 601 – 4555 Kingsway
Burnaby, BC
V5H 4V8

("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" for the purpose of this agreement mean a Group Home, Minor as defined by the City of Kelowna Zoning Bylaw.
- (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 Group Home, Minor occupied by that individual, including any individual who is confined to a wheelchair;
- (h) "Special Needs Unit" means a Group Home, Minor Dwelling that is designed and built for residential use by a Special Needs Individual and is subject to article 2;
- (i) "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;
- 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.

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

this Agreement is intended to serve the public interest by providing for occupancy of a Group Home, Minor, of the kind provided for in this Agreement, that are in demand in the City of Kelowna but that are not readily available;

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 one Special Needs Unit in the form of a Group Home, Minor, as defined by Section 2 of the City of Kelowna Zoning Bylaw.

2.2 Conditions of use:

- (a) **Maximum Number of Special Needs Occupants** - The Owner agrees with the City that the Special Needs Unit must be occupied by not more than six (6) Special Needs Individuals. 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 provided not more than 10 individuals in total reside within the Special Needs Unit.
- (b) **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.
- (c) **Licensing** - the use of the land, at all times, shall be regulated by a license under the Community Care Facilities Act and a City of Kelowna Business License. Application, maintenance and renewal of the licensing requirements shall be the sole responsibility of the Owner.

**ARTICLE 3
GENERAL**

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*,
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. Any approval to discharge this agreement shall be conditional on determination that the improvements on the Land comply with City of Kelowna Zoning Bylaw and any other policy or regulations that may apply. Any physical changes or rezoning required to make the land and improvements conform to the Zoning Bylaw are the sole responsibility of the Owner and must be completed prior to any approval to discharge this Agreement.

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.

SCHEDULE A
[SPECIAL NEEDS]

CANADA

PROVINCE OF BRITISH COLUMBIA

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

_____ 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].

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

)