

**CITY OF KELOWNA  
BYLAW NO. 10267**

**Housing Agreement Authorization Bylaw  
M19 Holdings Ltd – 130 Hartman Road, 915A - 915B,  
925 & 935 Rutland Road**

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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 M19 Holdings Ltd for the lands known as:

Lot 1, Section 26, Twp 26, ODYD, Plan KAP66718;  
Lot 2, Section 26, Twp 26, ODYD, Plan 15222;  
Lot 3, Section 26, Twp 26, ODYD, Plan 15222; and  
Lot 13, Section 26, Twp 26, ODYD, Plan KAP65904

located on Hartman Road and Rutland Road, 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. The City of Kelowna Bylaw No. 9901 being Housing Agreement Authorization Bylaw – Stephen and Michele Graham & 0790388 BC Ltd (Grason Enterprises) – 130 Hartman Road, 915A-915B, 925 & 935 Hartman Road and all amendments thereto, are hereby repealed.
4. 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 23<sup>rd</sup> day of November, 2009.

Adopted by the Municipal Council of the City of Kelowna this

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
City Clerk

**RENTAL HOUSING AGREEMENT**

THIS AGREEMENT dated for reference \_\_\_\_\_, 20\_\_ affects:

**LEGAL DESCRIPTION OF PROPERTY SUBJECT TO THE AGREEMENT:**

130 Hartman Road, Lot 2, plan 15222  
935 Rutland Road, Lot 1, plan 66718  
925 Rutland Road, lot 13, plan 65904  
915 Rutland Road, lot 3, plan 15222  
Section 26 Township 26, ODYD.

(Lands)

And is

**BETWEEN:**

M19 Holdings Ltd.  
830 Bernard Avenue  
Kelowna, BC  
V1Y 6P5

(Owner)

**AND:**

**CITY OF KELOWNA**, a local government incorporated pursuant to the *Community Charter* and having its 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 rental housing units, , on certain lands more particularly described in this Agreement;
- B. 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;
- C. The Owner and the City wish to enter into this Agreement to provide for rental housing on the terms and conditions set out in this Agreement, and agree that this Agreement is a housing agreement under s. 905 of the *Local Government Act*; and
- D. 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 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 -

"Rental Unit" means a Dwelling Unit that is available for only for rental purposes to tenants who will reside in the identified dwelling unit ;

"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;

"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 herein;

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

"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;

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

"Tenant" means a Household occupying a Rental Unit pursuant to a Tenancy Agreement.

**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 for rental occupancy only, 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 Land Use Restrictions** - 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 twenty seven (27) residential units at a density of .55 (floor area ratio) on the Land;
- (c) The Rental Units constructed by the Owner shall have a total net floor area of 2336 sq ft (approximately) consisting of three (3) units; and
- (d) The Owner acknowledges that the registration of this Rental Housing Agreement will allow the City to grant a density bonus of .05.

**2.1 Partial Release** - If not all the Dwelling Units on the Land are to be used as Rental Units, the Owner will not apply for a release of registered notice of this Agreement pursuant to section 2.2 in respect of any Dwelling Unit, and the Municipality will be under no obligation to provide such release, unless at the time that the Owner applies for the release the Owner is not in breach of any of its obligations under this Agreement and the Dwelling Units referred to in section 2.0(b) above have been designated as Rental Units and occupancy permits for those Rental Units have been issued by the City and those Rental Units are used and always have been used, occupied and transferred in compliance with this Agreement.

**2.2 Process for Partial Release** - Subject to section 2.1, at the request of the Owner and at the Owner's sole expense, the City will deliver to the Owner releases of notice of this Agreement in registrable form for each Dwelling Unit that:

- (a) is a separate legal parcel; and
- (b) is not a Rental Unit,

provided that, where the Land is subdivided under the *Strata Property Act*, the City may withhold delivery of any releases required to be delivered pursuant to this section until after the Municipality has received from the strata corporation its duly authorized agreement that it will not take any action that would result in an inability to rent the Rental Units in accordance with this Agreement or would render such rental a breach of the strata corporation bylaws.

**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 Rental Unit other than a full interest in the fee simple title to an agency or individual that will continue to ensure that the identified rental dwelling unit(s) are available in accordance with this Agreement.

**ARTICLE 4  
RENTAL UNITS**

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

- (a) the Owner must rent or lease a Rental Unit on the Land, and in no event may the Owner himself or herself occupy the Rental Unit;
- (b) the Owner must specify in every Tenancy Agreement the existence of this Agreement and the occupancy restrictions applicable to a Rental Unit, and attach a copy of this Agreement to every Tenancy Agreement; and
- (c) the Owner will deliver a copy of the Tenancy Agreement for each Rental Unit to the City upon demand.

**4.1 Prospective Tenants** – The Owner will be solely responsible for screening prospective Tenants. 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.

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

- (a) **Damages for Breach** - for each day an Rental 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 Unit or Special Needs Dwelling Unit in breach of this Agreement and the Owner has not cured that breach before expiry of that 60 days; and
- (b) **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.

**ARTICLE 5  
GENERAL**

- 5.1 Notice of Housing Agreement** - For clarity, the Owner acknowledges and agrees that:
- (a) this Agreement constitutes 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.
- 5.2 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.
- 5.3 Management** – The Owner covenants and agrees that it will furnish good and efficient management of the Rental Units and will permit representatives of the City to inspect the Rental 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 Rental 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 Rental Units.
- 5.4 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.
- 5.5 Agreement 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 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*.
- 5.6 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.

- 5.7 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.
- 5.8 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.
- 5.9 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.
- 5.10 Further Acts** - The Owner shall do everything reasonably necessary to give effect to the intent of this Agreement, including execution of further instruments.
- 5.11 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.
- 5.12 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.
- 5.13 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.
- 5.14 Amendment** - This Agreement may be discharged, amended or affected only by an instrument duly executed by both the Owner and the City.
- 5.15 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.



5.17 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.

IN WITNESS WHEREOF the parties hereunto have executed this Agreement on the date and year first above written.

SIGNED, SEALED & DELIVERED in )  
the presence of )

[Signature] )  
Signature of Witness )

Greg Germain )  
Print Name )

2160 Galvano Rd Kelowna )  
Address )

Business man )  
Occupation )

OWNER  
by its authorized signatories:

[Signature]  
Print Name: Juggy Mahwal

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

SIGNED, SEALED & DELIVERED in )  
the presence of: )

\_\_\_\_\_  
Signature of Witness )

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

\_\_\_\_\_  
Address )

\_\_\_\_\_  
Occupation )

CITY OF KELOWNA  
by its authorized signatories:

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
City Clerk

**SCHEDULE A**  
**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 [INSERT LEGAL]
	)	
	)	
	)	
	)	
	)	

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. For the period from \_\_\_\_\_, \_\_\_\_\_ to \_\_\_\_\_, \_\_\_\_\_ the Unit was occupied only as a rental unit in accordance with the Housing Agreement:.

5. 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 )