

**CITY OF KELOWNA
BYLAW NO. 10308**

**Housing Agreement Authorization Bylaw
P218 Enterprises Ltd and Wayne Holdings Ltd– 2970-3030 Pandosy Street**

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 P218 Enterprises Ltd and Wayne Holdings Ltd for the lands known as Lot 1, District Lot 14, Section 13, Township 25, ODYD, Plan KAP89388 located on Pandosy Street, 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 23rd day of March, 2010.

Adopted by the Municipal Council of the City of Kelowna this

Mayor

City Clerk

AFFORDABLE RENTAL HOUSING AGREEMENT

THIS AGREEMENT dated for reference _____, 2010 affects:

LEGAL DESCRIPTION OF PROPERTY SUBJECT TO THE AGREEMENT:

PID: 027-966-429
Lot 1 District Lot 14 and Section 13 Township 25 Osoyoos Division Yale District Plan KAP89388

(the "Lands")

And is

BETWEEN:

P 218 ENTERPRISES LTD.,
4470 Lakeshore Road
Kelowna, British Columbia V1W 4J4
As to an undivided 39300/48678 interest, and
WAYNE HOLDINGS LTD.,
RR1, McKinley Heights
Kelowna, British Columbia V1Y 7R9
As to an undivided 9378/48678 interest

(collectively, the "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

(the "City")

GIVEN THAT:

- A. The Owner has applied to the City for a Development Permit in respect of the Lands to permit the construction of a non-residential and residential development 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. 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 affordable 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 -

"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 Dwelling 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;

"Lands" means the lands described herein;

"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;

"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 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 Lands, 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 Lands must be used only in accordance with this Agreement;
- (b) The Owner will design, construct and maintain a maximum of ninety-six (96) residential units at a density of 1.66 (floor area ratio) on the Lands;
- (c) The Affordable Rental Units constructed by the Owner shall be a maximum of four (4) units totaling a minimum of 2336 square feet. The Affordable Rental Units shall comprise those residential units designated by the Owner as Affordable Rental Units in its development on the Lands at the Owner's sole discretion;

**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 an Affordable 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 affordable rental dwelling unit is available in accordance with this Agreement.

**ARTICLE 4
AFFORDABLE RENTAL UNITS**

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

- (a) the Owner must rent or lease an Affordable Rental Unit on the Lands 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 an 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 Affordable Rental Unit, and attach a copy of this Agreement to every Tenancy Agreement;
- (e) the Owner will deliver a copy of the Tenancy Agreement for each Affordable Rental Unit to the City upon demand; and
- (f) the Owner will terminate any Tenancy Agreement where the Tenant uses 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, save and except where otherwise set out in this Agreement, 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 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 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 Unit is occupied, the Owner will send the Community Planning Manager 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 Community Planning Manager of the City, in which case the City will verify and provide the information to the Owner.

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 filing a notice of housing agreement in the LTO against title to the Lands;
- (c) once such a notice is filed, this Agreement binds all persons who acquire an interest in the Lands; and
- (d) the City agrees to take all steps necessary to discharge/release any notice of housing agreement registered in the LTO against title to that portion(s) of the Lands which is determined not to include Affordable Rental Units, once the location of the Affordable Rental Units are determined by the Owner at its sole discretion in accordance with the terms of this Agreement and written notification of which units are Affordable Rental Units is provided to the City by the Owner.

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.

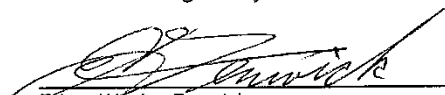
- 5.3 Management** – The Owner covenants and agrees that it will furnish good and efficient management of the Dwelling Units and will permit representatives of the City to inspect the Affordable Rental Units at any reasonable time, subject to the notice provisions of the *Residential Tenancy Act*. The Owner further covenants and agrees that it will maintain the Affordable 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 Lands. 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 Affordable 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 Lands** - 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 Lands and this Agreement burdens the Lands 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* until such time as the Affordable Rental Units are so designated by the Owner hereunder, at which point the obligations and covenants shall only burden and run with those Affordable Rental Units and the City shall discharge/release its interest in accordance with subparagraph 5.1(d) herein.
- 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 Lands.
- 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 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 and the City 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.
- 5.16 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.

OWNER:

P 218 ENTERPRISES LTD., by its
authorized signatory:


Edgar Wesley Fenwick

WAYNE HOLDINGS LTD., by its
authorized signatory:


Wayne North

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
[AFFORDABLE RENTAL UNITS]

CANADA
PROVINCE OF BRITISH COLUMBIA

IN THE MATTER OF A HOUSING
AGREEMENT WITH THE CITY OF
KELOWNA (the "Housing Agreement") for
the lands legally described as PID: 027-966-
429, Lot 1 District Lot 14 and Section 13
Township 25 Osoyoos Division Yale District
Plan KAP89388

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 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].

7. 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.
8. 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)
Kelowna, in the Province of British Columbia,)
this ____ day of _____, _____)

A Commissioner for taking affidavits for)
British Columbia)

) **Signature of person making declaration**

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, 2008
(Canada Mortgage and Housing Corporation Market Rental Survey- City of Kelowna)

	Bachelor	One Bedroom	Two Bedroom	Three Bedroom +
Average Monthly Rent	\$624	\$800	\$961	\$1,069

The Maximum Annual Income Calculations for 2008:

1 Bedroom Unit
Maximum Annual Income = \$800 X 40 = \$24,960

2 Bedroom Unit
Maximum annual income = \$961 X 40 = \$32,000

3 Bedroom Unit
Maximum annual income = \$1,069 X 40 = \$38,440