

CITY OF KELOWNA

BYLAW NO. 10624

Housing Agreement Authorization Bylaw John and Alana Marrington and John Balla - 2149, 2159, 2169, 2179 and 2189 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 John and Alana Marrington and John Balla for the lands known as Lot 2, DL 14, ODYD, Plan 5973; Lot 1, DL 14, ODYD, Plan 5973; Lot 3, DL 14, ODYD, Plan 3216; Lot 2, DL 14, ODYD, 3216; Lot 1, DL 14, ODYD, 3216 located on 2149, 2159, 2169, 2179 and 2189 Pandosy 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

Adopted by the Municipal Council of the City of Kelowna this

Mayor

City Clerk

AFFORDABLE RENTAL HOUSING AGREEMENT

THIS AGREEMENT dated for reference _____OCTOBER 19____, 2011__ affects:

LEGAL DESCRIPTION OF PROPERTY SUBJECT TO THE AGREEMENT:

2149 Pandosy Street Lot 1, DL 14, ODYD, Plan 3216; 2159 Pandosy Street Lot 2, DL 14, ODYD, Plan 3216; 2169 Pandosy Street Lot 3, DL 14, ODYD, Plan 3216; 2179 Pandosy Street Lot 1, DL 14, ODYD, Plan 5973; 2189 Pandosy Street Lot 2, DL 14, ODYD, Plan 5973

("Lands")

And is

BETWEEN:

John & Alana Marrington & John Balla
1524 Woodridge Road
Kelowna BC V1W 3B4

("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 short term affordable rental housing units, in accordance with the rates as determined by the BC Ministry of Health , 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 equivalent daily rental rate established by the B.C. Cancer Lodge.

"Affordable Rental Unit" means a Dwelling Unit that is available for rent at an Affordable Rental rate equivalent to the rate as determined by the Canadian Cancer Society and BC Ministry of Health with the purpose to provide accommodation at a modest rate, for out of town patients and their families who need to be close to a KGH or the Southern Interior Cancer Centre for treatment or tests.

"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.

"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. 10500, 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;

"Special Needs Individual" means an individual with physical or mental disabilities or illness who has special needs respecting the design and construction of a Dwelling Unit occupied by that individual, and includes any individual who is confined to a wheelchair;

"Special Needs Dwelling Unit" means a dwelling designed to accommodate the needs of a Special Needs Individual, which unit may or may not also be an Affordable Rental Unit;

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

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, specific to short and medium term rental accommodation for patients and their families/caregivers receiving treatment or testing from the Southern Interior Cancer Centre or Kelowna General Hospital within the City of Kelowna of which are determined to be in short supply;

- (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 43 residential units at a density of 1.3 (floor area ratio) on the Land;
- (c) The Affordable Rental Units constructed by the Owner shall have a total net floor area of, 1,400sq ft total for 3 units consisting of 3 units appropriate for short term residential use for out of town patients and their families who need to be close to a Cancer Centre for treatment or tests.; and
- (e) The Owner acknowledges that the registration of this Affordable Housing Agreement will allow the City to grant a density bonus of Maximum 0.1.

**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 building containing 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(s) are 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) eligibility of the affordable rental units will be for BC Cancer patients or Kelowna General Hospital patients and their families or caregivers who need accommodation in close proximity to the Southern Interior Cancer Centre and Kelowna General Hospital for the purposes of treatment and tests. The affordable rental units will only be available and used by those patients and families, and must not be occupied or rented for general rental purposes to medical/health services Staff or other rental users.

- (b) the rent payable for an Affordable Rental Unit must be calculated as set out in Schedule "A" 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;

4.1 Prospective Tenants – The Owner will be solely responsible for screening prospective renters/tenants to determine whether or not they qualify for Affordable Rental units. Determination to provide accommodation at a modest rate will be exclusively based on eligibility for out of town patients and their families who need to be close to the Southern Interior Cancer Centre for treatment or tests.

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

- (a) **Rental Rate** - the daily or monthly charge for all individuals who occupy the Affordable Rental Unit must not exceed the amount set out in Schedule "A" 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 30 days' written notice to the Owner of the building in breach of this Agreement and the Owner has not cured that breach before expiry of that 30 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, 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.

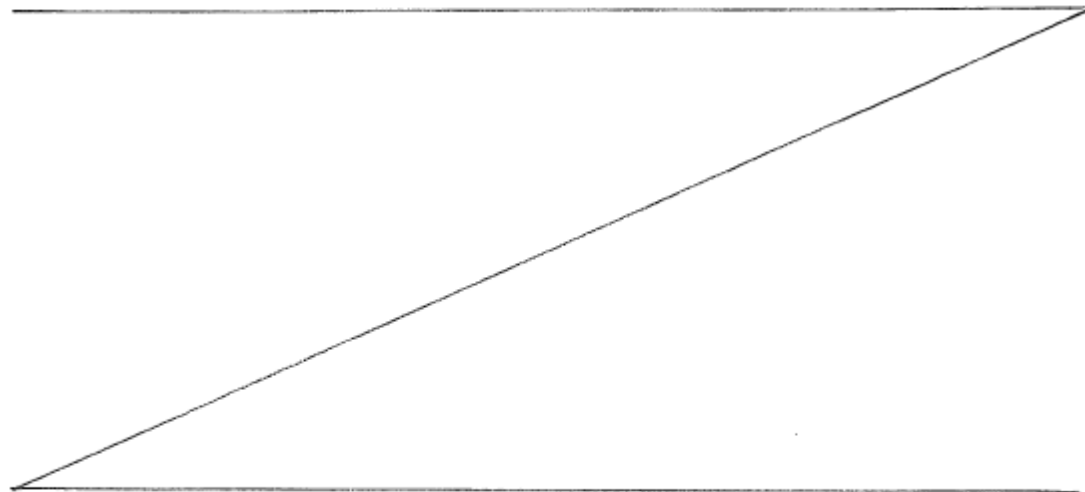
ARTICLE 5 GENERAL

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 Dwelling Units and will permit representatives of the City to inspect the Affordable Rental Units and Special Needs Dwelling 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 and Special Needs Dwelling 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 Affordable Rental Units and Special Needs Dwelling 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.



5.16 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.

SIGNED, SEALED & DELIVERED in the presence of:

D. Davies
Signature of Witness

D. Davies
Print Name

1435 WATER ST
Address KELOWNA BC

PLANNING TECH 1
Occupation

*As to all signatures

SIGNED, SEALED & DELIVERED in the presence of:

Signature of Witness

Print Name

Address

Occupation

*As to both signatures

JOHN MARRINGTON

ALANA MARRINGTON

JOHN BALLA, by his duly appointed Attorney, ALANA MARRINGTON

DENISE I. DAVIES
A COMMISSIONER FOR TAKING
AFFIDAVITS FOR BRITISH COLUMBIA
1435 Water Street, Kelowna, BC

CITY OF KELOWNA
by its authorized signatories:

Mayor

City Clerk

SCHEDULE 'A'
[AFFORDABLE RENTAL CALCULATIONS]

The "Affordable Rental" rate is based on the equivalent daily or monthly rate charges determined by the BC Ministry of Health Services and charged by the Canadian Cancer Society for BC Cancer Lodge rates which includes accommodation and all meals.