

REPORT TO COUNCIL



Date: May 30, 2012

To: City Manager

From: Land Use Management, Community Sustainability (BD)

Application: Housing Agreement

Owner: Klassen Ventures Ltd.

Address: 3281 Hall Road

Applicant: Klassen Ventures Ltd.

Subject: Housing Agreement Authorization

Existing OCP Designation: Single/Two Residential

Existing Zone: RR3 - Rural Residential 3

1.0 Recommendation

THAT Bylaw No.10718 authorizing a Housing Agreement between the City of Kelowna and Klassen Ventures Ltd. (Inc. No. BC0779214), which requires the owners to construct special needs housing for seniors in the form of a "Group Home, Minor" that will provide assisted living services to seniors and special needs individuals residing in the Group Home on Lot 1, Section 16, Twp, 26, ODYD, Plan 12525, Except Plan 33899, located at 3281 Hall Road be forwarded for reading consideration.

2.0 Purpose

To consider the City of Kelowna entering into a Housing Agreement to facilitate a building permit to construct special needs housing for seniors and special needs individuals in the form of a "Group Home, Minor".

3.0 Land Use Management

The applicant team is proposing a 'group home, minor' use in the form of a single family dwelling for the subject property. Under a typical process, a Housing Agreement would accompany a rezoning application to consider either a zone or density that exceeds what the OCP has designated for the property. In this instance, the applicant team is proposing the 'group home, minor' use to be secondary to the principal use of single dwelling housing. The 'group home minor' use is a permissible secondary use under the RR3 zone, with the condition that a Housing Agreement be registered on title for the subject property. Given this, no other development approvals are required to review the form and character or scope of the proposal.

While this process deviates from what is typically experienced for a Housing Agreement, the zone allows the secondary use subject to the principal use being fulfilled. It is acknowledged that the proposal for the single family dwelling building form represents a significant departure from what exists in this well established rural neighborhood, however as the land use supports this secondary use, it will be a requisite of the applicant team to ensure that the principal use of a

94

single dwelling housing be fulfilled in order to satisfy the intent of the secondary use of 'Group Home, minor'.

4.0 Proposal

4.1 Project Description

There is an existing house on the site that would have to be demolished upon completion/occupancy of the proposed new construction. The applicant team proposes to build a single detached home to incorporate facilities for the principal use as a single dwelling house (including but not limited to living, dining, kitchen, office and bedroom spaces) but to have a floor plan that would accommodate the 'group home, minor' use (including up to 6 bedrooms for residences and up to 4 bedrooms for Staff or residents that do not require care). An internal courtyard area is proposed for enjoyment of the residents on-site.

The Housing Agreement is the legal document to be registered on-title to secure the Group Home, minor use to specifically accommodate special needs housing for seniors or special needs individuals requiring additional care.

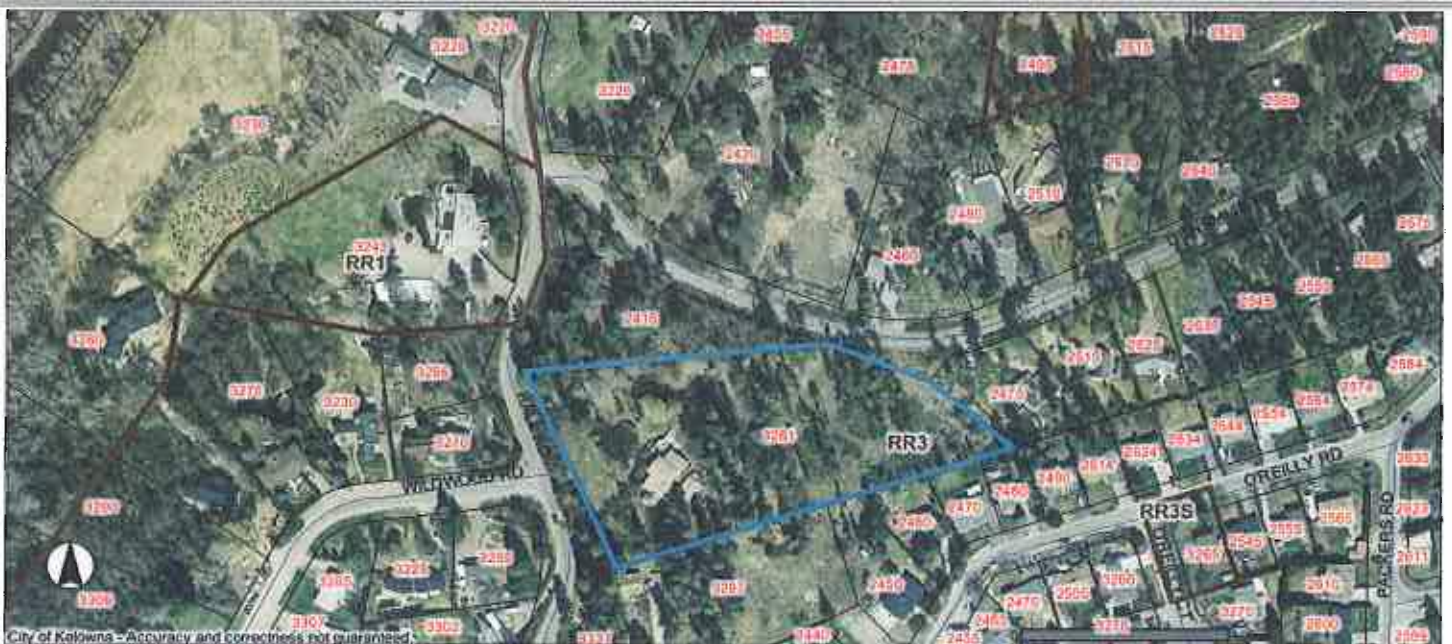
4.2 Site Context

The subject property is located at the corner of Dunsmuir and Hall Road, in the Hall Road subdivision area. All properties in the immediate neighborhood are developed as rural residential.

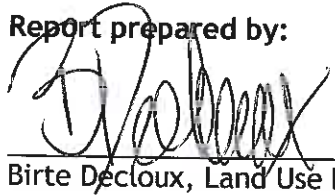
Specifically, adjacent land uses are as follows:

Orientation	Zoning	Land Use
North	RR3	Rural residential
East	RR3	Rural residential
South	RR3	Rural residential
West	RR3	Rural residential

Subject Property Map: 3281 Hall Road

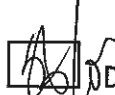


Report prepared by:



Birte Decloux, Land Use Planner

Reviewed by:



Danielle Noble Manager, Urban Land Use

Approved for Inclusion:



Shelley Gambacort, Director, Land Use Management

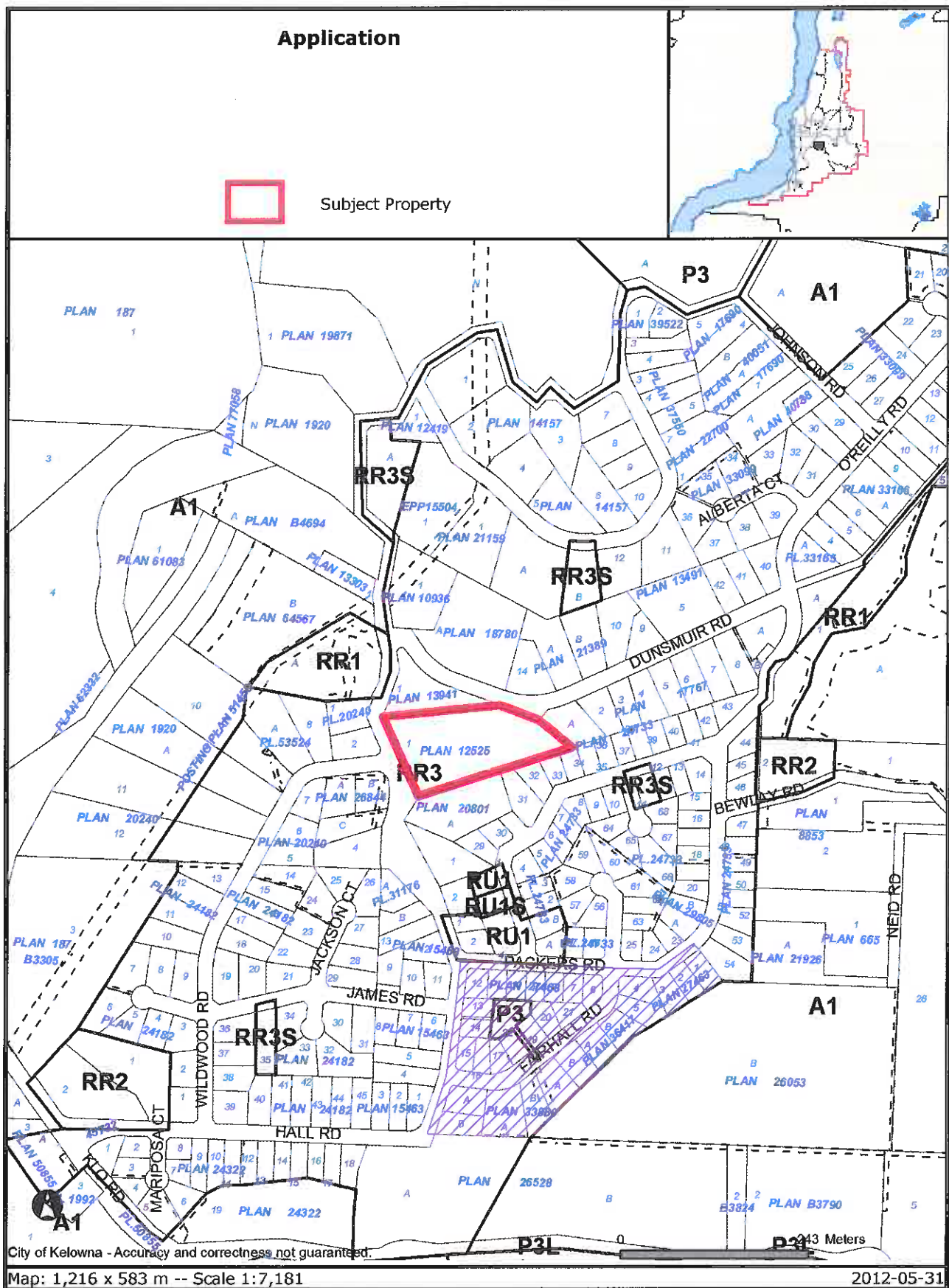
Attachments:

Housing Agreement

Letter of Proposal

Site Plan

Concept Elevations



To: City of Kelowna
Attn: Andrew Browne
email: abrowne@kelowna.ca

February 23, 2011

Re: 2415 Dunsmuir Road and 3281 Hall Road, Kelowna, BC (The Site)

Dear City of Kelowna - Land Use Management Department,

Further to all previous correspondence the above noted property, please find attached a proposed building design for The Site noting the following:

- We are proposing a single detached home on The Site as per the attached concept Site Plan and building massings.
- The proposed single detached home to incorporate all facilities require for the principal use as a single dwelling house (including, but not limited to Living, Dining, Kitchen, Office and bedroom spaces).
- Bedrooms in the building are clustered around an internal central courtyard.
- The number of bedrooms in the home have been established in response to the intended secondary use as a Minor Group Home (including up to 6 bedrooms for residences as described in the City of Kelowna Bylaws for a Minor Group Home as well as up to 4 bedrooms for staff or residences that do not require care).

As part of the structure for the proposed home and in response to the City of Kelowna's Bylaw, the Ownership group will ensure that the requirements of the current standards governed by the Community Care Facility Act are met.

The consideration of The Site for this model of a single detached home that incorporates a Minor Group Home in direct accordance with the City of Kelowna Bylaws for the RR3 property provides benefits to the neighbourhood and City alike, including:

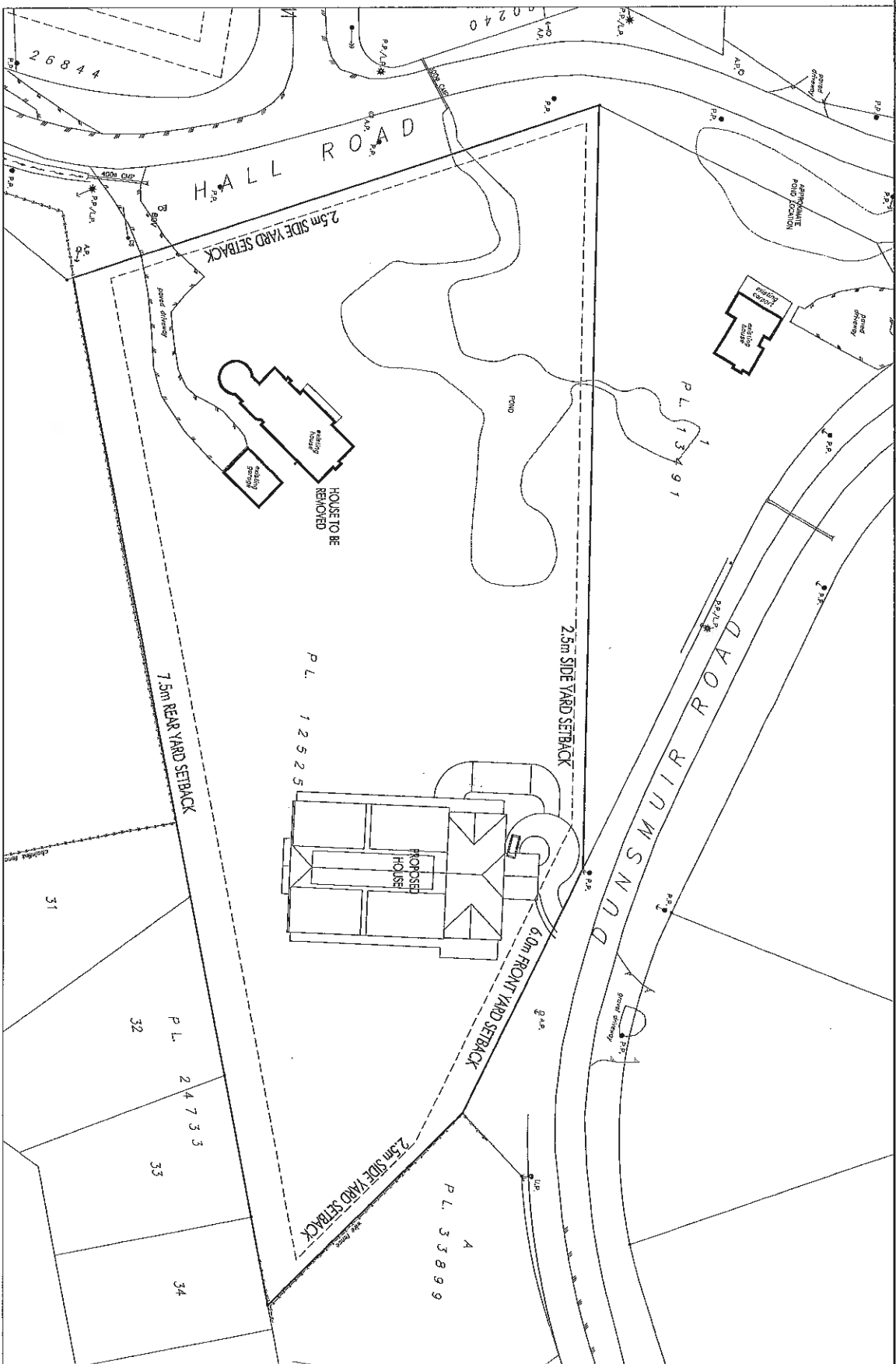
- Integration of supportive housing into an existing neighbourhood.
- Excellent opportunity for natural neighbourhood surveillance for the benefit and safety of the residents of the Minor Group Home.
- Provide a variety of housing choices within the existing neighbourhood.

We look forward to your review of the above noted information and attached as well as your confirmation that the proposed building for the Site is in direct keeping with the current zone for the property.

Please do not hesitate to contact our office if you have any questions or require additional information.

Sincerely,

Matt Johnston MAIBC, MRAIC, LEED AP
Architecturally Distinct Solutions Inc.



PROPERTY DESCRIPTION

3281 Hill Road, Kalamazoo, MI 49001-1000

LEGAL: Letti, Pion 12525, ODYO

ZONING CALCULATIONS: PHASE 1

CURRENT:	City of Kelowna RR3 Zoning (Rural Residential 3)
PROPOSED:	City of Kelowna RR3 Zoning (Rural Residential 3)

SITE INFORMATION:

152,168 ft² (1.69 ha)

Buildings Foundation Forging

$$\frac{210 \text{ ft}^2/\text{min}}{30\%} = 54,650 \text{ ft}^2 \text{ [5,077 m}^2\text{]}$$
$$\frac{170 \text{ g/mol}}{9\%} = 17,400 \text{ Hz} \quad (1.616 \text{ m}^2)$$

FOR BUILDING PERMIT

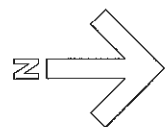
RM3 REQUIREMENTS:

Max. Building Height 9.5m (31.2 ft) or 2-1/2 stories

Yard Sale:

Slides: 2.0m (6.56 ft) up to 1-1/2 stories / 2.3m (7.54 ft) up to 2-1/2 stories

Off-Street Parking Requirements:
1/3 Bedrooms



3281 Hdl Road

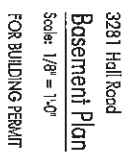
Schematic Site Plan

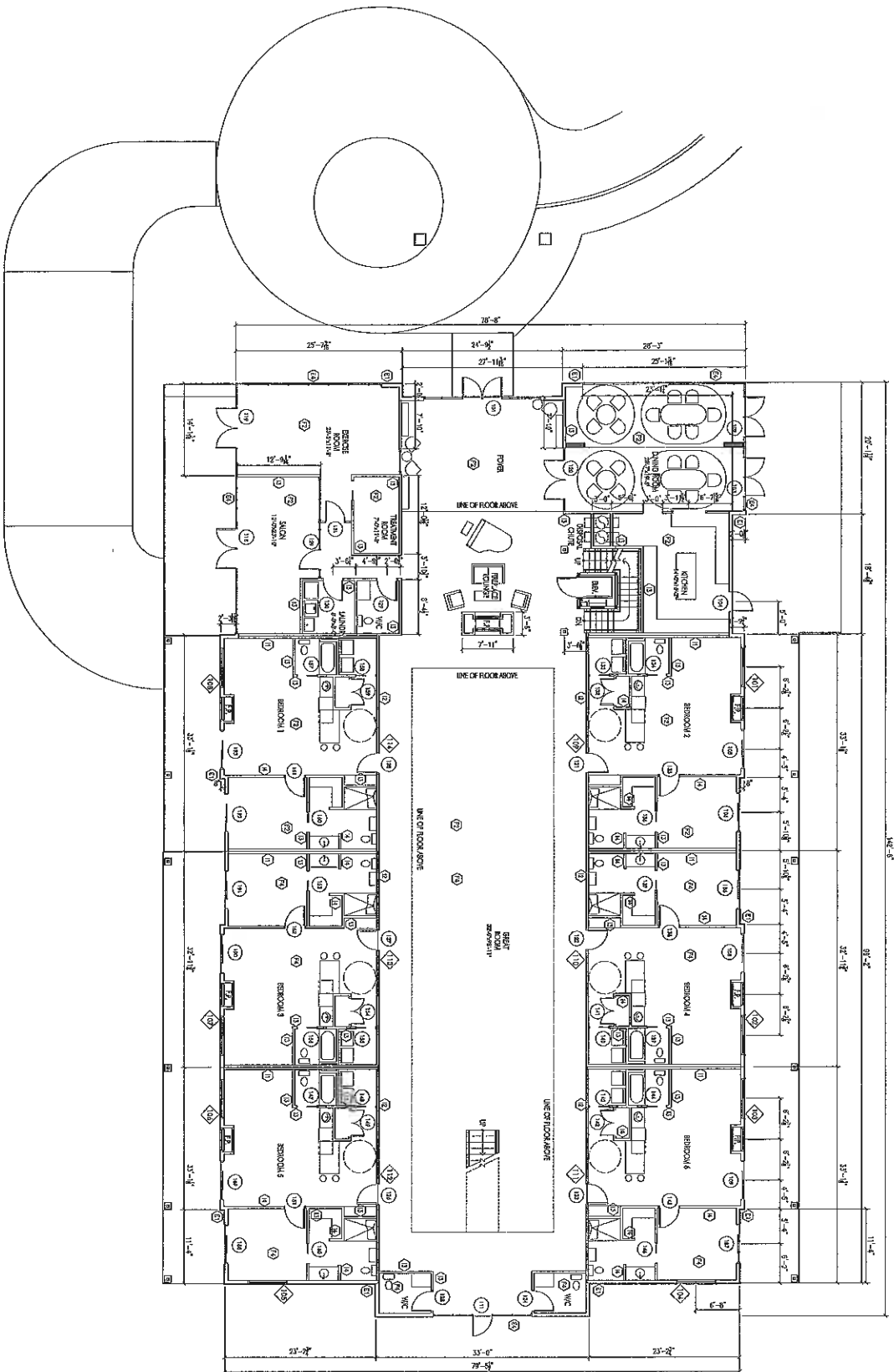
Scale: 1/32" = 1'-0"

Architectural floor plan of a building, likely a school or community center. The plan shows various rooms and their dimensions. Key areas include:

- MEETING ROOM:** Located in the upper right, containing a table and chairs. Dimensions: 12'-0" x 14'-0".
- RESTROOM:** Located in the upper right, containing a toilet and sink. Dimensions: 5'-0" x 6'-0".
- CLOSET:** Located in the upper right, containing a door. Dimensions: 5'-0" x 6'-0".
- STORAGE:** Located in the upper right, containing a door. Dimensions: 5'-0" x 6'-0".
- LOCKER:** Located in the upper right, containing a door. Dimensions: 5'-0" x 6'-0".
- HALL:** A large central hall with a wheelchair icon. Dimensions: 11'-0" x 10'-0".
- STAIRS:** Located in the upper right, containing a staircase. Dimensions: 5'-0" x 6'-0".
- ENTRY:** Located in the upper right, containing a door. Dimensions: 5'-0" x 6'-0".
- ACCESS TO GYM:** Located in the upper right, containing a door. Dimensions: 5'-0" x 6'-0".
- CONFERENCE:** A large room at the bottom, containing a large table and chairs. Dimensions: 11'-0" x 10'-0".

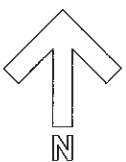
Dimensions are provided for many rooms and corridors. A large 'X' is drawn across the bottom right section of the plan.



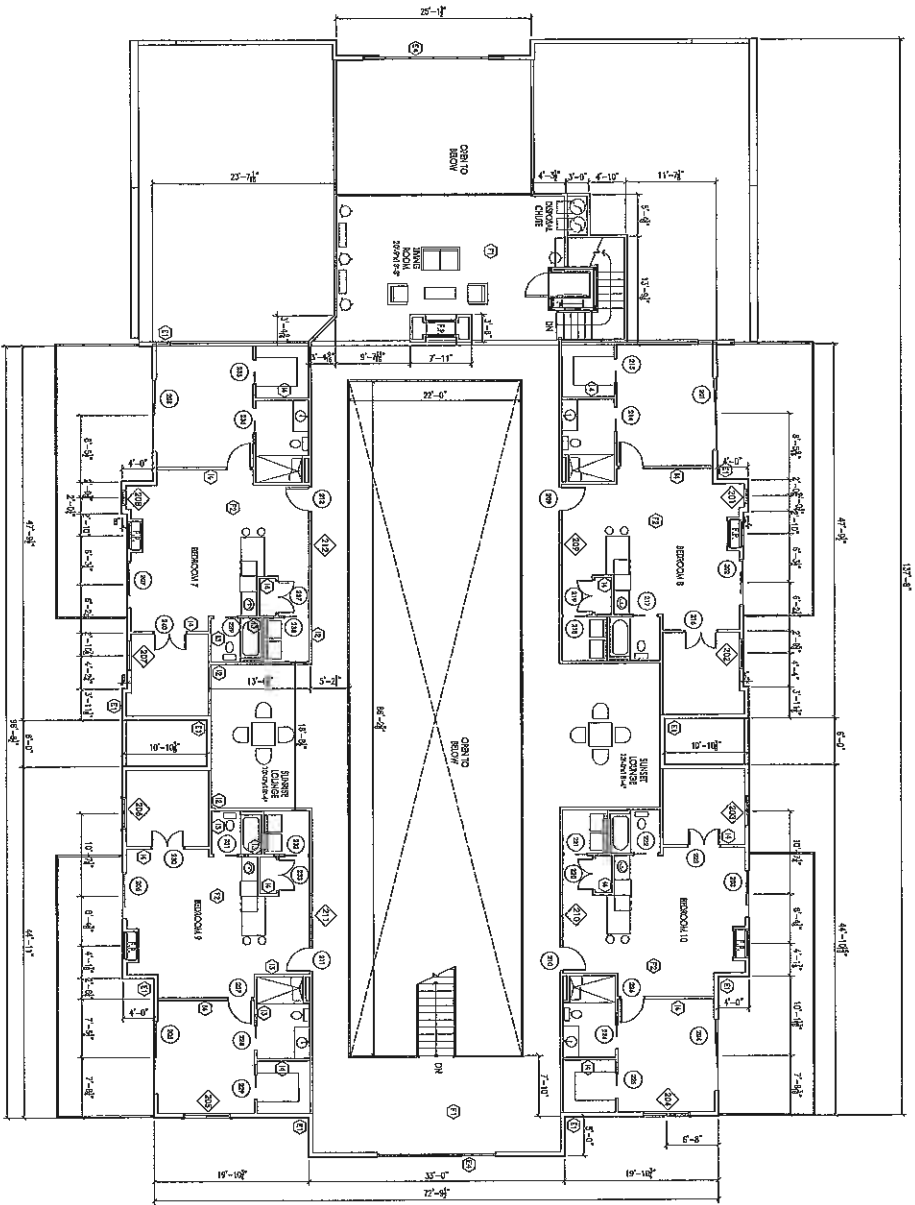


WINDOW SCHEDULE	
MARK	SIZE
01	12" x 16"
02	12" x 20"
03	12" x 24"
04	12" x 28"
05	12" x 32"
06	12" x 36"
07	12" x 40"
08	12" x 44"
09	12" x 48"
10	12" x 52"
11	12" x 56"
12	12" x 60"
13	12" x 64"
14	12" x 68"
15	12" x 72"
16	12" x 76"
17	12" x 80"
18	12" x 84"
19	12" x 88"
20	12" x 92"
21	12" x 96"
22	12" x 100"
23	12" x 104"
24	12" x 108"
25	12" x 112"
26	12" x 116"
27	12" x 120"
28	12" x 124"
29	12" x 128"
30	12" x 132"
31	12" x 136"
32	12" x 140"
33	12" x 144"
34	12" x 148"
35	12" x 152"
36	12" x 156"
37	12" x 160"
38	12" x 164"
39	12" x 168"
40	12" x 172"
41	12" x 176"
42	12" x 180"
43	12" x 184"
44	12" x 188"
45	12" x 192"
46	12" x 196"
47	12" x 200"
48	12" x 204"
49	12" x 208"
50	12" x 212"
51	12" x 216"
52	12" x 220"
53	12" x 224"
54	12" x 228"
55	12" x 232"
56	12" x 236"
57	12" x 240"
58	12" x 244"
59	12" x 248"
60	12" x 252"
61	12" x 256"
62	12" x 260"
63	12" x 264"
64	12" x 268"
65	12" x 272"
66	12" x 276"
67	12" x 280"
68	12" x 284"
69	12" x 288"
70	12" x 292"
71	12" x 296"
72	12" x 300"
73	12" x 304"
74	12" x 308"
75	12" x 312"
76	12" x 316"
77	12" x 320"
78	12" x 324"
79	12" x 328"
80	12" x 332"
81	12" x 336"
82	12" x 340"
83	12" x 344"
84	12" x 348"
85	12" x 352"
86	12" x 356"
87	12" x 360"
88	12" x 364"
89	12" x 368"
90	12" x 372"
91	12" x 376"
92	12" x 380"
93	12" x 384"
94	12" x 388"
95	12" x 392"
96	12" x 396"
97	12" x 400"
98	12" x 404"
99	12" x 408"
100	12" x 412"

DOOR SCHEDULE	
MARK	SIZE
01	12" x 16"
02	12" x 20"
03	12" x 24"
04	12" x 28"
05	12" x 32"
06	12" x 36"
07	12" x 40"
08	12" x 44"
09	12" x 48"
10	12" x 52"
11	12" x 56"
12	12" x 60"
13	12" x 64"
14	12" x 68"
15	12" x 72"
16	12" x 76"
17	12" x 80"
18	12" x 84"
19	12" x 88"
20	12" x 92"
21	12" x 96"
22	12" x 100"
23	12" x 104"
24	12" x 108"
25	12" x 112"
26	12" x 116"
27	12" x 120"
28	12" x 124"
29	12" x 128"
30	12" x 132"
31	12" x 136"
32	12" x 140"
33	12" x 144"
34	12" x 148"
35	12" x 152"
36	12" x 156"
37	12" x 160"
38	12" x 164"
39	12" x 168"
40	12" x 172"
41	12" x 176"
42	12" x 180"
43	12" x 184"
44	12" x 188"
45	12" x 192"
46	12" x 196"
47	12" x 200"
48	12" x 204"
49	12" x 208"
50	12" x 212"
51	12" x 216"
52	12" x 220"
53	12" x 224"
54	12" x 228"
55	12" x 232"
56	12" x 236"
57	12" x 240"
58	12" x 244"
59	12" x 248"
60	12" x 252"
61	12" x 256"
62	12" x 260"
63	12" x 264"
64	12" x 268"
65	12" x 272"
66	12" x 276"
67	12" x 280"
68	12" x 284"
69	12" x 288"
70	12" x 292"
71	12" x 296"
72	12" x 300"
73	12" x 304"
74	12" x 308"
75	12" x 312"
76	12" x 316"
77	12" x 320"
78	12" x 324"
79	12" x 328"
80	12" x 332"
81	12" x 336"
82	12" x 340"
83	12" x 344"
84	12" x 348"
85	12" x 352"
86	12" x 356"
87	12" x 360"
88	12" x 364"
89	12" x 368"
90	12" x 372"
91	12" x 376"
92	12" x 380"
93	12" x 384"
94	12" x 388"
95	12" x 392"
96	12" x 396"
97	12" x 400"
98	12" x 404"
99	12" x 408"
100	12" x 412"

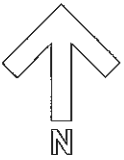


3281 Hall Road
Main Floor Plan
Scale: 1/8" = 1'-0"
FOR BUILDING PERMIT



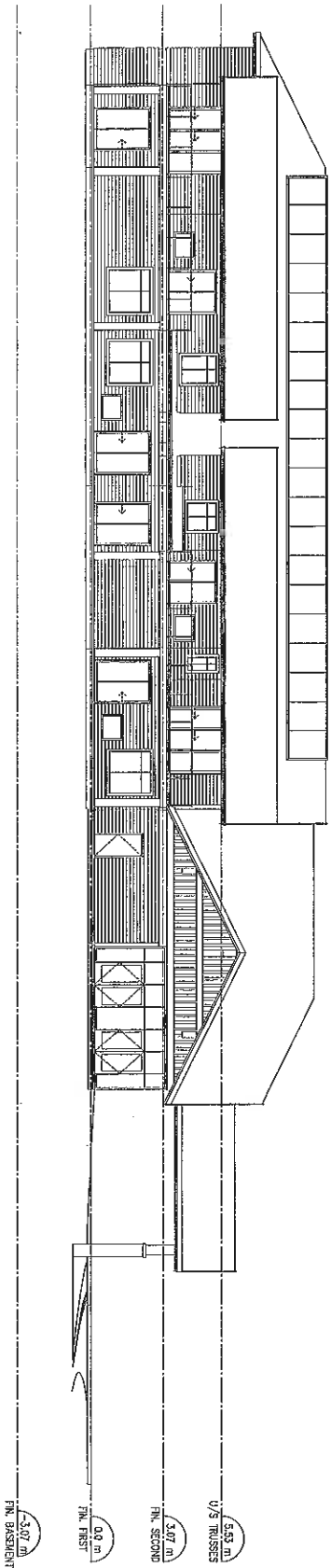
DOOR SCHEDULE			NOTES
DOOR	MARK	SIZE	
1	WD	3'-0" x 7'-0"	
2	WD	3'-0" x 7'-0"	
3	WD	3'-0" x 7'-0"	
4	WD	3'-0" x 7'-0"	
5	WD	3'-0" x 7'-0"	
6	WD	3'-0" x 7'-0"	
7	WD	3'-0" x 7'-0"	
8	WD	3'-0" x 7'-0"	
9	WD	3'-0" x 7'-0"	
10	WD	3'-0" x 7'-0"	
11	WD	3'-0" x 7'-0"	
12	WD	3'-0" x 7'-0"	
13	WD	3'-0" x 7'-0"	
14	WD	3'-0" x 7'-0"	
15	WD	3'-0" x 7'-0"	
16	WD	3'-0" x 7'-0"	
17	WD	3'-0" x 7'-0"	
18	WD	3'-0" x 7'-0"	
19	WD	3'-0" x 7'-0"	
20	WD	3'-0" x 7'-0"	
21	WD	3'-0" x 7'-0"	
22	WD	3'-0" x 7'-0"	
23	WD	3'-0" x 7'-0"	
24	WD	3'-0" x 7'-0"	
25	WD	3'-0" x 7'-0"	

WINDOW SCHEDULE		
MARK	SIZE	SILL HEIGHT
1	4'-0" x 6'-0"	4'-0"
2	4'-0" x 6'-0"	4'-0"
3	4'-0" x 6'-0"	4'-0"
4	4'-0" x 6'-0"	4'-0"
5	4'-0" x 6'-0"	4'-0"
6	4'-0" x 6'-0"	4'-0"
7	4'-0" x 6'-0"	4'-0"
8	4'-0" x 6'-0"	4'-0"
9	4'-0" x 6'-0"	4'-0"
10	4'-0" x 6'-0"	4'-0"
11	4'-0" x 6'-0"	4'-0"
12	4'-0" x 6'-0"	4'-0"
13	4'-0" x 6'-0"	4'-0"
14	4'-0" x 6'-0"	4'-0"
15	4'-0" x 6'-0"	4'-0"
16	4'-0" x 6'-0"	4'-0"
17	4'-0" x 6'-0"	4'-0"
18	4'-0" x 6'-0"	4'-0"
19	4'-0" x 6'-0"	4'-0"
20	4'-0" x 6'-0"	4'-0"
21	4'-0" x 6'-0"	4'-0"
22	4'-0" x 6'-0"	4'-0"
23	4'-0" x 6'-0"	4'-0"
24	4'-0" x 6'-0"	4'-0"
25	4'-0" x 6'-0"	4'-0"

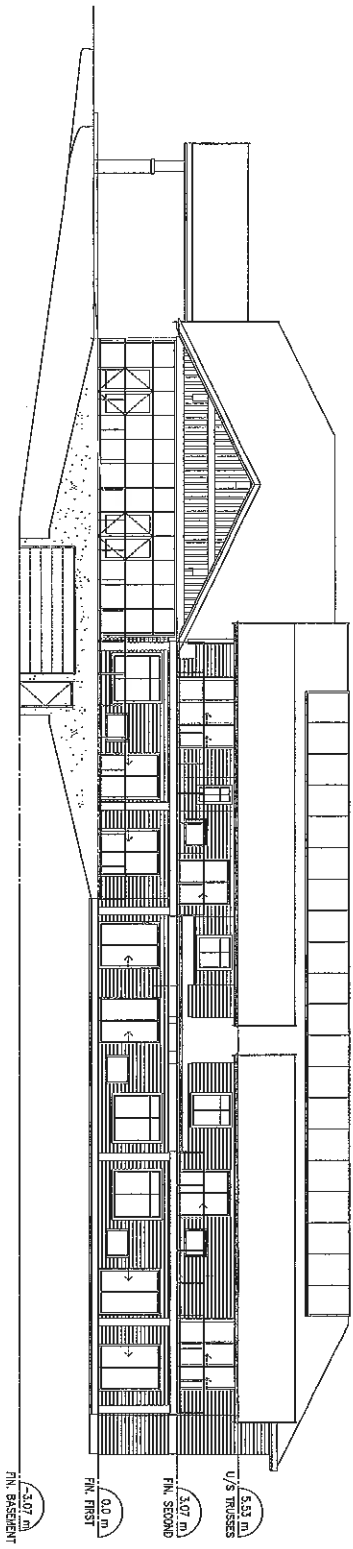


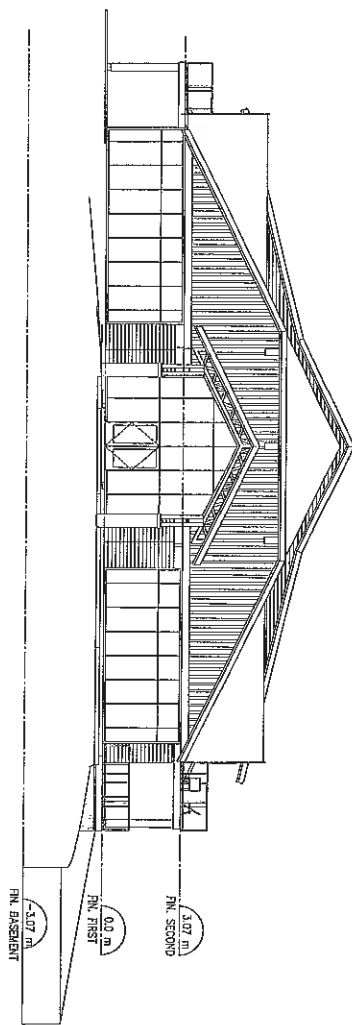
3281 Hall Road
 Second Floor Plan
 Scale: 1/8" = 1'-0"
 FOR BUILDING PERMIT

1 ELEVATION - EAST
1/8" = 1'-0"

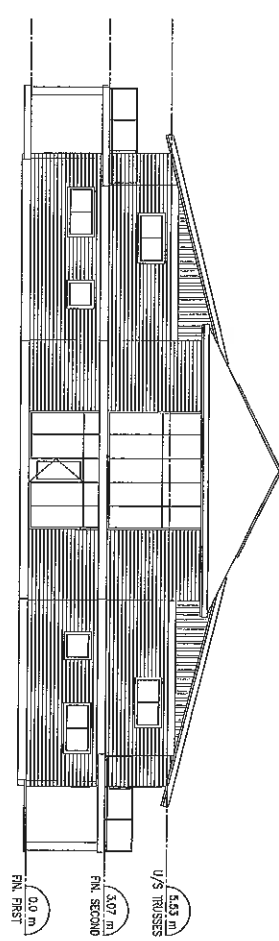


2 ELEVATION - WEST
1/8" = 1'-0"





1 ELEVATION - NORTH
1/8" = 1'-0"



2 ELEVATION - SOUTH
1/8" = 1'-0"

SPECIAL NEEDS HOUSING AGREEMENT: GROUP HOME, MINOR

THIS AGREEMENT dated for reference May 7, 2012 affects:

LEGAL DESCRIPTION OF PROPERTY SUBJECT TO THE AGREEMENT:

Parcel Identifier: 004-434-058

Lot 1 Section 16 Township 26 Osoyoos Division Yale District Plan 12525 Except Plan 33899

("Land")

And is

BETWEEN:

KLASSEN VENTURES LTD. (Inc. No. BC0779214)
2121 Faulkner Court
Kelowna, B.C. V1Z 3N8

("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 a building permit to construct special needs housing for seniors in the form of a "Group Home, Minor" that will provide assisted living services to seniors and special needs individuals residing in the Group Home, and the Owner has consented to the designation of the Land for special needs housing in accordance with the City's definitions of special needs housing, 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 City in respect of the use of land or construction on land;
- C. The Owner and the City enter into this Agreement to provide rental of special needs housing for seniors adhering to 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*;
- 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 -

"Bedroom" means a room containing a window, located in a dwelling, which due to its design or location in the dwelling, is or may be used primarily for sleeping. It includes dens, lofts, studies, and libraries;

"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, including Hospitality Services and Personal Assistance services;

"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 residence; this use does not include a room in a hotel or a motel but does include Sleeping Units within a Group Home, Minor;

"Group Home, Minor" means the use of one Dwelling Unit as a care facility or an assisted living residence respectively licensed or registered under the *Community Care and Assisted Living Act* to provide room and board for not more than six residents with physical, mental, social or behavioural problems that require professional care, guidance and supervision; a group home minor may include, to a maximum of four, any combination of Caregivers and residents not requiring care and the occupants live together as a single housekeeping group and use a common kitchen;

"Hospitality Services" means the provision of the following services:

1. Three meals per day, including one main meal;
2. Housekeeping of common areas and sleeping units;
3. Laundry service for linens and towels, and facilities for personal laundry;
4. Social and recreational activities and opportunities; and
5. A means for residents to summon timely assistance from Caregivers in the event of an emergency;

"Land" means the land described herein;

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

"Official Community Plan" or "OCP" means the City of Kelowna Official Community Plan Bylaw No. 10500, or its successor bylaw;

"Owner" means the registered owner of the Land from time to time and any parcels into which the Land is subdivided;

"Personal Assistance" means, the provision of the following services:

1. Regular assistance with the activities of daily living, including dressing, bathing, grooming, assisting with meals and performing specific care tasks of a rehabilitative or personal care nature; and/or
2. Assistance with medication routines, including secure storage and safekeeping of medications for residents, providing medications to residents and assisting residents to self administer their medications.

"Senior" means an individual aged 65 years or older;

"Sleeping Unit" means a habitable room, including a Bedroom, not equipped with self-contained cooking facilities;

"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 Housing" means housing for individuals that meet the criteria for a core need for housing in the Official Community Plan and includes seniors or persons with or without children who lack safe and secure housing or are leaving an abusive relationship, single parents and children who are at risk, street youth or homeless persons, or people with mental or physical disabilities, illnesses, or dependencies;

"Special Needs Sleeping Units" means Sleeping Units, situated within a Group Home, Minor, to be rented to persons who are Seniors or Special Needs Individuals;

"Zoning Bylaw" means City of Kelowna Bylaw No. 6000, as amended from time to time, or its successor bylaw.

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 and 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 Seniors and Special Needs Individuals, of the kinds provided for in this Agreement, that are in demand in the City of Kelowna but that are not readily available; and
- (b) 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
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) A maximum of one "Group Home, Minor" in addition to the principal use of single dwelling housing (as defined by the Zoning Bylaw) shall be built on the Land by the Owner; and
- (c) The Group Home, Minor constructed by the Owner shall be a secondary use and located within one single detached Dwelling Unit, as defined by the Zoning Bylaw.

2.1 Criteria for Release - At such a time that:

- (a) the Dwelling Unit on the Land ceases to be used as a licensed "Group Home, Minor" use,
- (b) the Dwelling Unit on the Land has not been regulated by a Provincial group home license or Provincial registration issued by the Office of the Assisted Living Registrar, for three consecutive months, or
- (c) the Owner has made an application to the City to subdivide the Land

the Owner may apply for a release of the registered notice of this Agreement, 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.

- 2.2 **Full Release** - Subject to section 2.1, at the written request of the Owner and at the Owner's sole expense, the City will deliver to the Owner a release of notice of this Agreement in registrable form.

ARTICLE 3 OCCUPATION AND TRANSFER RESTRICTIONS

3.0 **Occupation and Transfer Restrictions** - The City and the Owner agree as follows:

- (a) **Transfer** - The Owner must not sell or transfer, or agree to sell or transfer, any interest in a Group Home, Minor other than full interest in the fee simple title to an agency or individual that will ensure that the Group Home, Minor continues to be available in accordance with this Agreement or to individuals who meet the Group Home, Minor criteria;
- (b) **Prospective Purchasers** - The Owner will be solely responsible for screening prospective purchasers of a subject property to determine whether or not they meet the Ownership criteria in accordance with the 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 purchaser;
- (c) **Notification of this Agreement** - The Owner must disclose in every purchase and sale agreement for the Land the existence of this Agreement, including the occupancy restrictions, and provide the prospective purchaser with a copy of this Agreement prior to the sale;
- (d) **Occupier criteria** - The Owner agrees that the following apply in respect of those who occupy a the Group Home, Minor:
 - i) At least one Caregiver must be a permanent resident of the Group Home, Minor. The parties agree that the provision is reasonable having regard to the definition of "single detached housing" and "Group Homes, Minor" in the Zoning Bylaw which apply to the Lands;
 - ii) No more than six Seniors or Special Needs Individuals, using the Hospitality Services and the Personal Assistance services, living in Special Needs Sleeping Units; and
 - iii) No more than ten (10) persons shall occupy the Dwelling Unit;
- (e) **Provincial License** - All Special Needs Sleeping Units shall maintain an active Health Care License issued by Interior Health Authority or an active Registration issued by the Office of the Assisted Living Registrar, Province of B.C., and be in compliance with the requirements and regulations of the *Community Care and Assisted Living Act*, as amended from time to time.
- (f) **No Rental Except for Special Needs** - The Owner shall not rent or lease:
 - i) the Land or the Dwelling Unit on the Land except to an agency or individual that will operate the Dwelling Unit on the Land in accordance with this Agreement, or
 - ii) a Special Needs Sleeping Unit on the Land except to a person who is a Senior or Special Needs Individual.

- 3.1 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 at its discretion request such a statutory declaration from time to time but no more than once a year.
- 3.2 Mortgages and Mortgage Insurers** - In the event that the Dwelling Unit on the Land is subject to a mortgage or charge in favour of a lender insured by a mortgage insurer, as further defined in Schedule B (attached), the terms of Schedule B shall govern.

ARTICLE 4

GENERAL

- 4.1 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 will 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.
- 4.2 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.
- 4.3 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.
- 4.4 Agreement Runs With the Land** - Every obligation and covenant of the Owner in this Agreement constitutes a contractual obligation by the Owner to the City 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*, save and except any parcel of land released from the Agreement pursuant to Section 2.2.

- 4.5 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 Unit 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.
- 4.6 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.
- 4.7 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.
- 4.8 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.
- 4.9 Equitable Remedies** - The Owner acknowledges and agrees that damages would be an inadequate remedy for the City for breach of this Agreement, that the City is entitled to obtain an order for specific performance of this Agreement and a prohibitory or mandatory injunction in respect of any breach by the Owner of this Agreement, and further that this clause is reasonable given the public interest in restricting the occupancy and disposition of each Dwelling Unit on the Land in accordance with this Agreement.
- 4.10 Further Acts** - The Owner shall do everything reasonably necessary to give effect to the intent of this Agreement, including execution of further instruments.
- 4.11 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.
- 4.12 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.
- 4.13 Amendment** - This Agreement may be discharged, amended or affected only by an instrument duly executed by both the Owner and the City.
- 4.14 Entirement** - 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.

[this space left intentionally blank]

4.15 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 of Witness

TIMOTHY T. BROWN
BARRISTER and SOLICITOR
Print Name: 1200 - 1486 Ellis Street
Kelowna, B.C. V1Y 2A8
Phone: 763-7848

Address

Occupation

KLASSEN VENTURES LTD.
by its authorized signatories:


Print Name: ROLAND NASON

Print Name: _____

SIGNED, SEALED & DELIVERED in
the presence of:

Signature of Witness

Print Name

Address

CITY OF KELOWNA
by its authorized signatories:

Mayor

City Clerk

SCHEDULE A
SPECIAL NEEDS HOUSING AGREEMENT

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 Lot 1, Section 16, Township 26,
		ODYD, Plan 12525 except Plan 33899

I, _____, of _____, do solemnly declare:

1. This declaration is made with respect to the Dwelling Unit ("Unit") legally or otherwise described as follows:
 [Lot _____, Section 16, Township 26, ODYD, Plan 12525 except Plan 33899].
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 Dwelling Unit has a maximum occupancy of _____ persons who reside on an ongoing basis in _____
 sleeping units and no more than _____ reside in the Unit at any time.
5. For the period from _____ to _____ [previous 6 months] the Unit was
 occupied by the following mix of persons in accordance with the Housing Agreement:
 - a. _____ persons who require hospitality services and personal assistance services; and
 - b. _____ persons who are staff and residents not requiring care.
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 _____
 _____, 20____.

) Signature of person making declaration

)
 A Commissioner for taking affidavits for
 British Columbia)

SCHEDULE B

MORTGAGE and MORTGAGE INSURER AGREEMENT TERMS

In the event that an Owner, who met the Affordable Ownership criteria, enters into a mortgage in respect of an Affordable Ownership Dwelling Unit, the Owner, the Lender, the Mortgage Insurer, and the City agree to the following terms:

In this Agreement:

"Lender" means a mortgagee or holder of a financial charge (the "Charge") that is registered against the title to the Affordable Ownership Dwelling Unit;

"Mortgage Insurer" means Canada Mortgage and Housing Corporation or another company or organization that has an interest in the Charge and that has entered into a mortgage default insurance agreement or other mortgage loan insurance arrangement with a Lender;

"Owner" means the current Owner meeting the Affordable Ownership criteria in possession of the Affordable Ownership Dwelling Unit; and

"Property" means the Affordable Ownership Dwelling Unit and any real property upon which it is located.

In the event of default by the Owner under the Charge, where a Lender or Mortgage Insurer holding a Charge on the Property, notifies the City that the Owner is in default under its Charge, the City shall have a sixty (60) day period beginning on the date of such notice to take such steps as the City deems necessary to preserve the Housing Agreement. Following the sixty (60) day period, if the Owner's default is not cured, the Lender or Mortgage Insurer can enforce the rights under the Charge, including the right to foreclose or sell the Property. Upon sale or foreclosure of the Owner's Property by the Lender or Mortgage insurer, the Housing Agreement shall cease to apply to the Property and notice shall be discharged from the title to the Property by the City. Notwithstanding the foregoing, if the proceeds of sale from the Lender or Mortgage Insurer exceed the loss under the mortgage including all costs and expenses incurred, as determined by the Lender or Mortgage Insurer, such excess amount shall be paid to the City, subject to any prior encumbrances or applicable provincial or federal legislation.