

# CITY OF KELOWNA

## BYLAW NO. 10718

### Housing Agreement Authorization Bylaw Klassen Ventures Ltd. Inc. No. BC0779214 - 3281 Hall 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 Klassen Ventures Ltd. Inc. No. BC0779214 for the lands known as Lot 1, Section 16, Township 26, ODYD, Plan 12525 Except Plan 33899 located on 3281 Hall 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. 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

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Mayor

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City Clerk

**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: 004-434-056

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. 8000, 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 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.

[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: **#200 - 1465 Ellis Street**  
**Kelowna, B.C. V1Y 2A3**  
**Phone: 763-7646**

Address

Occupation

**KLASSEN VENTURES LTD.**  
by its authorized signatories:

  
Print Name: **ROLAND NADON**

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 1, 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.