

CITY OF KELOWNA

BYLAW NO. 12426

Housing Agreement Authorization Bylaw – 350 DOYLE AVENUE HOLDINGS INC. (INC. No. BC1283012) 350 Doyle Avenue

Whereas pursuant to Section 483 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 350 DOYLE AVENUE HOLDINGS INC. (INC. No. BC1283012) for the lands known as Lot C District Lot 139 Osoyoos Division Yale District Plan EPP95954 located on Doyle 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

Schedule "A"

ATTAINABLE RENTAL HOUSING AGREEMENT

THIS AGREEMENT dated for reference _____, 2022:

BETWEEN:

350 DOYLE AVENUE HOLDINGS INC. (INC. No. BC1283012)
2800-666 Burrard St.
Vancouver, BC, V6C 2Z7

("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 is the tenant under lease No. CA8766187 (the "Lease") registered against title to lands located in the City of Kelowna and legally described as:

Parcel Identifier 031-303-579 Lot C District Lot 139 Osoyoos Division Yale District Plan EPP95954 (the "Land");
- B. The Owner has applied to the City for rezoning of the Land to permit the construction of a housing complex that will include some attainable rental housing units in accordance with this Agreement;
- C. 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;
- D. The Owner and the City wish to enter into this Agreement to provide for attainable 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
- E. 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 -

"**Attainable Rental Rate**" means a rental rate per annum that is no more than 30% of the Median Total Income of Households for the City of Kelowna, as published by Statistics Canada's Census of Population from time to time and as adjusted for changes in the annual average Consumer Price Index (CPI) for Canada from the most recent publication date beginning no earlier than one year following the adoption of this agreement;

"**Attainable Rental Unit**" means a Dwelling Unit that is available for rent at an Attainable 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;

"**CPI**" means British Columbia's Consumer Price Index;

"**Dwelling Unit**" means a unit of accommodation providing for a sleeping area, washroom, and no more than one kitchen, intended for domestic use, and used or intended to be used permanently or semi permanently for a Household. This use does not include a room in a hotel or a motel,

"**Household**" means:

- (a) a person;
- (b) two or more persons related by blood, marriage, or adoption; or associated through foster care, all living together in one dwelling unit as a single household using common cooking facilities;
- (c) a group of not more than five persons, including boarders, who are not related by blood, marriage, or adoption, or associated through foster care, all living together in one dwelling unit as a single household using common cooking facilities; or
- (d) a combination of (b) and (c), provided that the combined total does not include more than 3 persons unrelated by blood, marriage or adoption or associated through foster care; all living together in one dwelling unit as a single household using common cooking facilities.

In addition, a household may also include up to one Caregiver or nanny;

"**Land**" means the land defined in recital A hereto;

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

"**Owner**" means the tenant under Lease no. CA8766187 and its successors and assigns;

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

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

1.2 Interpretation - In this Agreement:

- (a) reference to the singular includes a reference to the plural, and vice versa, unless the context requires otherwise;
- (b) article and section headings have been inserted for ease of reference only and are not to be used in interpreting this Agreement;
- (c) reference to a particular numbered section or article, or to a particular lettered Schedule, is a reference to the correspondingly numbered or lettered article, section or Schedule of this Agreement;
- (d) if a word or expression is defined in this Agreement, other parts of speech and grammatical forms of the same word or expression have corresponding meanings;
- (e) the word "enactment" has the meaning given in the *Interpretation Act* on the reference date of this Agreement;
- (f) reference to any enactment includes any regulations, orders or directives made under the authority of that enactment;
- (g) reference to any enactment is a reference to that enactment as consolidated, revised, amended, re-enacted or replaced, unless otherwise expressly provided;
- (h) the provisions of s. 25 of the *Interpretation Act* with respect to the calculation of time apply;
- (i) time is of the essence;
- (j) all provisions are to be interpreted as always speaking;
- (k) reference to a "party" is a reference to a party to this Agreement and to their respective successors, assigns, trustees, administrators and receivers;
- (l) reference to a "day", "month", "quarter" or "year" is a reference to a calendar day, calendar month, calendar quarter or calendar year, as the case may be, unless otherwise expressly provided;
- (m) the definitions given in the City of Kelowna Zoning Bylaw No. 8000, or its successor bylaw, and the Official Community Plan apply for the purposes of this Agreement; and
- (n) any act, decision, determination, consideration, consent or exercise of discretion by a party, or other person, as provided in this Agreement must be performed, made or exercised acting reasonably.

1.3 Purpose of Agreement - The Owner and the City agree that:

- (a) this Agreement is intended to serve the public interest by providing for occupancy of a certain number of Dwelling Units, of the kinds provided for in this Agreement;
- (b) performance of this Agreement by the Owner is a condition of issuance of a development permit for the Lands which the Owner acknowledges is 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

2.1 Land Use Restrictions - The Owner, as the Tenant under the Lease, 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 minimum of 10% of total number of Dwelling Units on the Land as Attainable Rental Units in accordance with this agreement.

ARTICLE 3 HOUSING AGREEMENT AND TRANSFER RESTRICTIONS

3.1 Purchaser Qualifications - The Owner must not sell, assign or transfer any interest in the Lease other than by way of mortgage or the transfer of full interest in the Lease to a person that is bound by the covenant in this Agreement to ensure that the identified Attainable Rental Unit(s) are available in accordance with this Agreement.

ARTICLE 4 ATTAINABLE RENTAL UNITS

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

- (a) the Owner must rent or lease an Attainable Rental Unit on the Land only for a monthly rent not to exceed 1/12 of the Attainable Rental Rate pursuant to a Tenancy Agreement with restrictions on future increases of rent governed by the *Residential Tenancy Act*.
- (b) if the Owner has an Attainable Housing Unit available for rent, the Owner shall advertise or market it as available for rent at the Attainable Rental Rate for a minimum of one week and if there is more than one prospective tenant, the Owner shall lease to the applicant with lowest Household income unless there is an objective and commercially reasonable reason not to;
- (c) the Owner agrees that since the Attainable Rental Rate includes consideration, fees or charges for use of common property, and common 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 an Attainable Rental Unit under this section for use of common property, sanitary sewer, storm sewer, or water utilities for or in respect of the Dwelling Unit provided that it is expressly agreed that the Owner may charge additional fees or require the occupant to pay directly for gas or electrical utilities provided to the Dwelling Unit and the occupants may be charged additional amounts for other services or rights which the occupant may subscribe for such as parking or storage;
- (d) the Owner will deliver a copy of the Tenancy Agreement for each Attainable Rental Unit to the City upon demand;

- (e) each calendar year, the owner will provide an annual summary to the City detailing the number, unit types, and tenant income information on or before the annual date of occupancy; 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).

4.2 Minimum Construction Requirements – The Owner agrees that the Attainable Rental Units will be designed and constructed in accordance with the following minimum requirements:

- (a) all of the Attainable Rental Units will be designed and constructed to the same standard, in terms of layout, workmanship, materials and finishings as the other residential Dwelling Units to be constructed on the Lands;

4.3 Minimum Unit Mix of Attainable Rental Units – The owner agrees to provide the minimum breakdown of Attainable Rental Units as follows:

- (a) no more than 18 of the Attainable Rental Units will be standard studio apartments;
- (b) a minimum of 8 of the Attainable Rental Units will be deluxe studio apartments.

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. 483 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 Attainable Rental Units and will permit representatives of the City to inspect the Attainable 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 Attainable Rental Units in a

satisfactory state of repair and fit for habitation and will comply with all laws, including health and safety standards applicable to the Land.

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 holder of the tenant's rights under the Lease.

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 Attainable 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 Termination. This Agreement will terminate on the tenth anniversary date of the issuance of an occupancy or final inspection certificate for the housing complex to be constructed on the Land.

5.16 Enurement - This Agreement binds the parties to it and their respective successors, heirs, executors and administrators. Reference in this Agreement to the "City" is a reference also to the elected and appointed officials, employees and agents of the City.

5.17 Deed and Contract - By executing and delivering this Agreement each of the parties intends to create both a contract and a deed executed and delivered under seal.

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

350 DOYLE AVENUE HOLDINGS INC. (INC. No. BC1283012)

Per:



Authorized Signatory

CITY OF KELOWNA

Per:

Authorized Signatory

Authorized Signatory