

CITY OF KELOWNA

BYLAW NO. 10886

**Housing Agreement Authorization Bylaw
PRODEV GP LTD Inc. No. A87135 and 1378310 Alberta Ltd Inc. No.
A77231
2755 McCurdy Road**

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 PRODEV GP LTD Inc. No. A87135 and 1378310 Alberta Ltd Inc. No. A77231 for the lands known as Lot 1, District Lots 124 and 415, ODYD, Plan KAP84653 located on 2755 McCurdy Road, Kelowna, B.C., a true copy of which is attached to and forms part of this bylaw as Appendix "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 14th day of July, 2014.

Readings rescinded by the Municipal Council of the City of Kelowna this

Mayor

City Clerk

PURPOSE-BUILT RENTAL HOUSING AGREEMENT

THIS AGREEMENT dated for reference July 21, 2013 affects:

LEGAL DESCRIPTION OF PROPERTY SUBJECT TO THE AGREEMENT:

PID: 027-196-101
Lot 1 District Lots 124 and 415 Osoyoos Division Yale District Plan KAP84653
("Land")

And is

BETWEEN:

PRODEV GP LTD., Inc. No. A87135
2800, 715 5th Avenue SW
Calgary, AB T2P 2X6, and

1378310 ALBERTA LTD., Inc. No. A77231
12220 Stony Plain Road
Edmonton, AB T5N 2X6

(collectively, "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 purpose-built rental housing units, as defined in this Agreement, 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 purpose-built 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 -

"Area D" means that portion of the Land shown as "D" on Schedule "A" attached hereto;

"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;

"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 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. 7600, or its successor bylaw;

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

"Purpose-Built Rental Housing" means strata lots or a self-contained building(s) containing Dwelling Units that are intended to be used only for rental purposes to tenants who will reside in the identified dwelling unit;

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

"Tenant" means a Household occupying a 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, 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
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 strata lots, a building, buildings, or a portion of a building or buildings providing 17 Dwelling Units as Purpose-Built Rental Housing within Area D;
- (d) The Owner will designate 17 of the Dwelling Units on Area D as Purpose-Built Rental Housing by written notice delivered to the City, which is irrevocable by the Owner upon receipt by the City of the written notice, but no designation is effective unless and until the City confirms in writing that the location of the Dwelling Units are approved by the City for the Purpose-Built Rental Housing, acting reasonably as a local government.

2.1 Partial Release - If not all the Dwelling Units on the Land are to be used as Purpose-Built Rental Housing, the Owner will not apply for a release of registered notice of this Agreement pursuant to section 2.2 in respect of any Dwelling Unit, and the Municipality will be under no obligation to provide such release, unless at the time that the Owner applies for the release

- (a) the Owner is not in breach of any of its obligations under this Agreement;
- (b) the Purpose-Built Rental Housing Dwelling Units within Area D have been designated as Purpose-Built Rental Housing and occupancy permits for those Purpose-Built Rental Housing Dwelling Units have been issued by the City; and
- (c) those Purpose-Built Rental Housing Dwelling Units have been issued by the City and those Purpose-Built Rental Housing Dwelling Units are used and always have been used, occupied and transferred in compliance with this Agreement.

Notwithstanding the foregoing, the Owner may apply for a release of this Agreement pursuant to section 2.2 in respect of the first 155 dwelling units built on the Land which need not be Purpose-Built Rental Housing.

2.2 Process for Partial Release - Subject to section 2.1, at the request of the Owner and at the Owner's sole expense, the City will deliver to the Owner releases of notice of this Agreement in registrable form for each portion of the Land not within Area D and each Dwelling Unit that:

- (a) is a separate legal parcel; and
- (b) is not a Purpose-Built Rental Housing Dwelling Unit,

provided that, if that portion of the Lands containing the Purpose-Built Rental Housing Dwelling Units is subdivided under the *Strata Property Act*, the City may withhold delivery of any release against units in Area D that are not Purpose-Built Rental Housing Dwelling Units under this section unless:

- (c) the Owner has filed a Rental Disclosure Statement pursuant to section 139 of the *Strata Property Act* designating each Purpose-Built Rental Housing Dwelling Unit as a rental strata lot with a rental

period expiry date no earlier than 10 years from the date of stratification; and

- (d) the strata corporation created by the filing of the strata plan over Area D has the following contained within its bylaws:

"Strata Lots are subject to a Housing Agreement with the City of Kelowna. No action shall be taken by the owners or the strata corporation to restrict or limit the terms of the Housing Agreement, including, but not limited to, amendment to these bylaws".

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 strata lot or building containing Dwelling Unit(s) that are Purpose-Built Rental Housing on the Land other than a full interest in the fee simple title to an agency or individual that will continue to ensure that the identified 17 Dwelling Unit(s) that are Purpose-Built Rental Housing are available in accordance with this Agreement.

3.1 Use and Occupancy For Purpose-Built Rental Housing Dwelling Unit - The Owner agrees with the City as follows:

- (a) the Owner must rent or lease each Purpose-Built Rental Housing Dwelling Unit on the Land, and in no event may the Owner himself or herself occupy a Purpose-Built Rental Housing Dwelling Unit;
- (b) the Owner must specify in every Tenancy Agreement the existence of this Agreement and the occupancy restrictions applicable to a Purpose-Built Rental Housing Dwelling Unit, and attach a copy of this Agreement to every Tenancy Agreement; and
- (c) the Owner will deliver a copy of the Tenancy Agreement for each Purpose-Built Rental Housing Dwelling Unit to the City upon demand.

3.2 Prospective Tenants – The Owner will be solely responsible for screening prospective Tenants. For greater certainty, the Owner agrees that the City is not responsible for, and makes no representation to the Owner regarding, the suitability of any prospective Tenant.

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 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.

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 Management** – The Owner covenants and agrees that it will furnish good and efficient management of the Purpose-Built Rental Housing Dwelling Units and will permit representatives of the City to inspect the Purpose-Built Rental Housing 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 Purpose-Built Rental Housing 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 Purpose-Built Rental Housing Dwelling Units.
- 4.4 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.
- 4.5 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*.
- 4.6 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.
- 4.7 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.
- 4.8 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.
- 4.9 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.

- 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 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.
- 4.13 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.
- 4.14 Amendment** - This Agreement may be discharged, amended or affected only by an instrument duly executed by both the Owner and the City.
- 4.15 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.
- 4.16 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:)

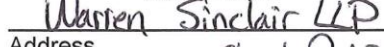


Signature of Witness)



Print Name)

LOUIS PIERRE CORRIVEAU
Student-At-Law)




Address)

600 4911 51st Street Red Deer
T4N 6V4)

student-at-law
Occupation 403-343-3320)

PRODEV GP LTD.
by its authorized signatories:





Print Name: PRESIDENT)

_____)

_____)

Print Name:)

SIGNED, SEALED & DELIVERED in)
the presence of:)

Signature of Witness)

PRATHAVAN P. VENKATRAMAN)
BARRISTER & SOLICITOR)
A NOTARY PUBLIC AND COMMISSIONER)
FOR OATHS IN AND FOR THE PROVINCE)
OF ALBERTA)

303. 9811.34 Ave.)
Address EDMONTON, AB.)

LAWYER)
Occupation)

1378310 ALBERTA LTD. by its)
authorized signatories:)

Tim Latimer)
Print Name:)

Print Name:)

SIGNED, SEALED & DELIVERED in)
the presence of:)

Signature of Witness)

Print Name)

Address)

Occupation)

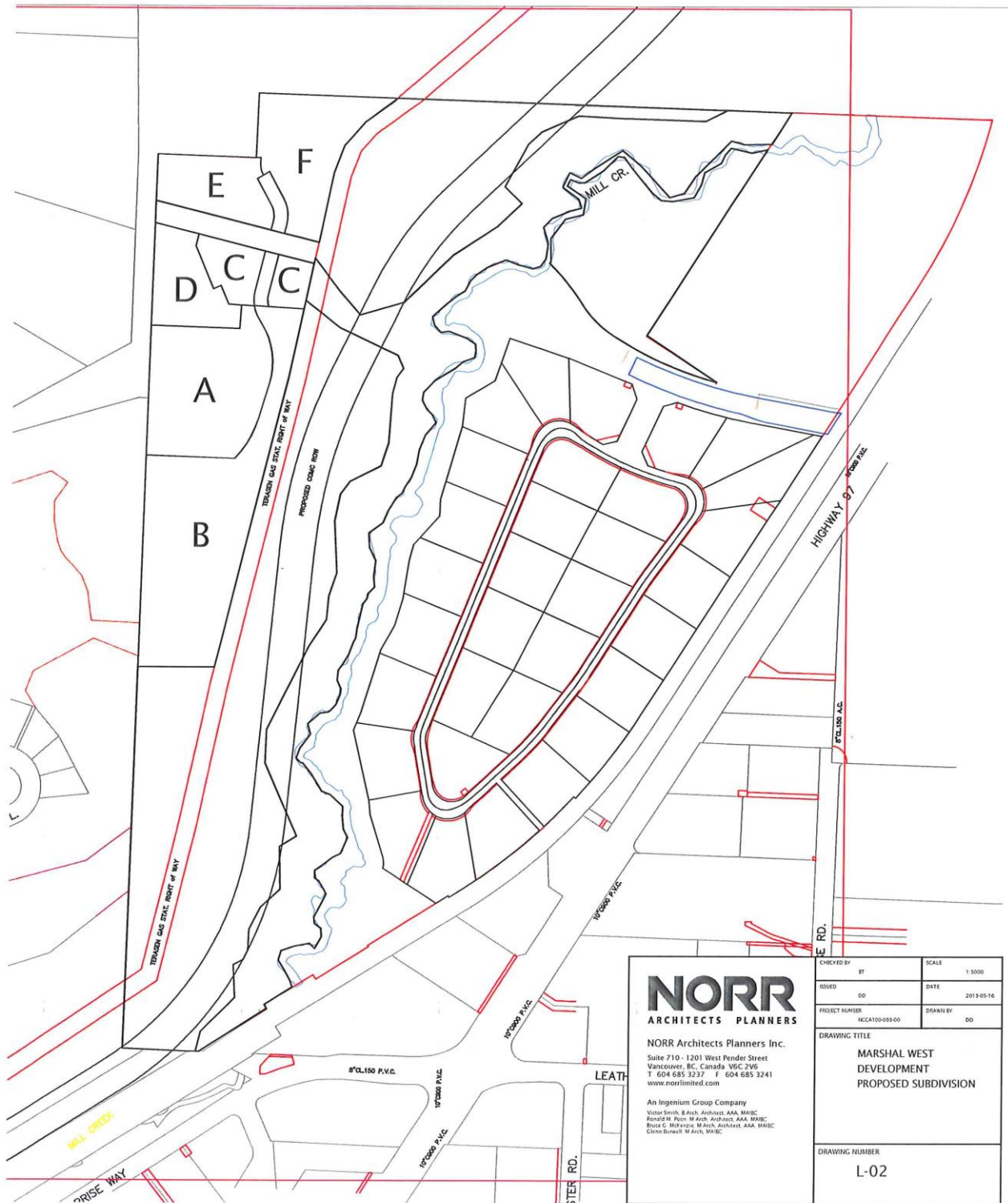
CITY OF KELOWNA)
by its authorized signatories:)

Mayor)

City Clerk)

Schedule "A"

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NORR ARCHITECTS PLANNERS		CHECKED BY	BT	SCALE	1:5000
NORR Architects Planners Inc. Suite 710 - 1201 West Pender Street Vancouver, BC, Canada V6C 2V6 T 604 685 3237 F 604 685 3241 www.norrlimited.com		ISSUED	DD	DATE	2013-05-16
An Ingenium Group Company Victor Smith, B.Arch, Architect, A.A.A., M.A.I.B.C. Ronald M. Peon, M.Arch, Architect, A.A.A., M.A.I.B.C. Bruce C. McKee, M.Arch, Architect, A.A.A., M.A.I.B.C. Claron Burnell, M.Arch, M.A.I.B.C.		PROJECT NUMBER	NCCA100-039-00	DRAWN BY	DD
		DRAWING TITLE MARSHAL WEST DEVELOPMENT PROPOSED SUBDIVISION			
		DRAWING NUMBER L-02			