

Memo



Date: November 13, 2009
File: 0870-20-006
To: City Manager
From: Director, Real Estate & Building Services
Subject: Pasture Land Lease and License Renewal - 1639 Byrns Road

Report Prepared by: T. Abrahamson, Property Officer

Recommendation:

THAT Council approve the City entering into a Lease and Licence renewal, in the form attached to the Report of the Director, Real Estate & Building Services, dated November 13, 2009, between the City of Kelowna and Timothy Munson for the use of City-owned property as shown on the plan attached, to be used for farming practices for a one (1) year term from December 1, 2009 to November 30, 2010 at a rate of \$1,500.00 per year;

AND THAT the Mayor and City Clerk be authorized to execute all documents necessary to complete this transaction.

Background:

Munson Pond Park consists of three properties that were acquired in 1995 and an additional property acquired in 2008 by the City to accommodate construction of the future Burtch Road corridor, the sewage treatment plant and park. The property is not yet required for those purposes and is being leased under its current land use. Tim Munson currently occupies the City-owned land for farming purposes.

The proposed lease rate is representative of market value for active ALR farming property.

Legal/Statutory Authority:

Community Charter, Sec. 26 - Disposal of Municipal Property

Legal/Statutory Procedural Requirements:

Community Charter, Sec. 94 - Notice Requirements

Considerations not applicable to this report:

Internal Circulation:

Existing Policy:

Financial/Budgetary Considerations:

Personnel Implications:

Technical Requirements:

External Agency/Public Comments:

Communications Considerations:

Alternate Recommendation:

A handwritten signature in black ink, consisting of a stylized 'R' followed by a checkmark-like flourish.

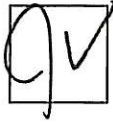
The Real Estate & Building Services Department would request Council's support of renewing the Lease agreement and Licence of Occupation for a further one (1) year term.

Submitted by:



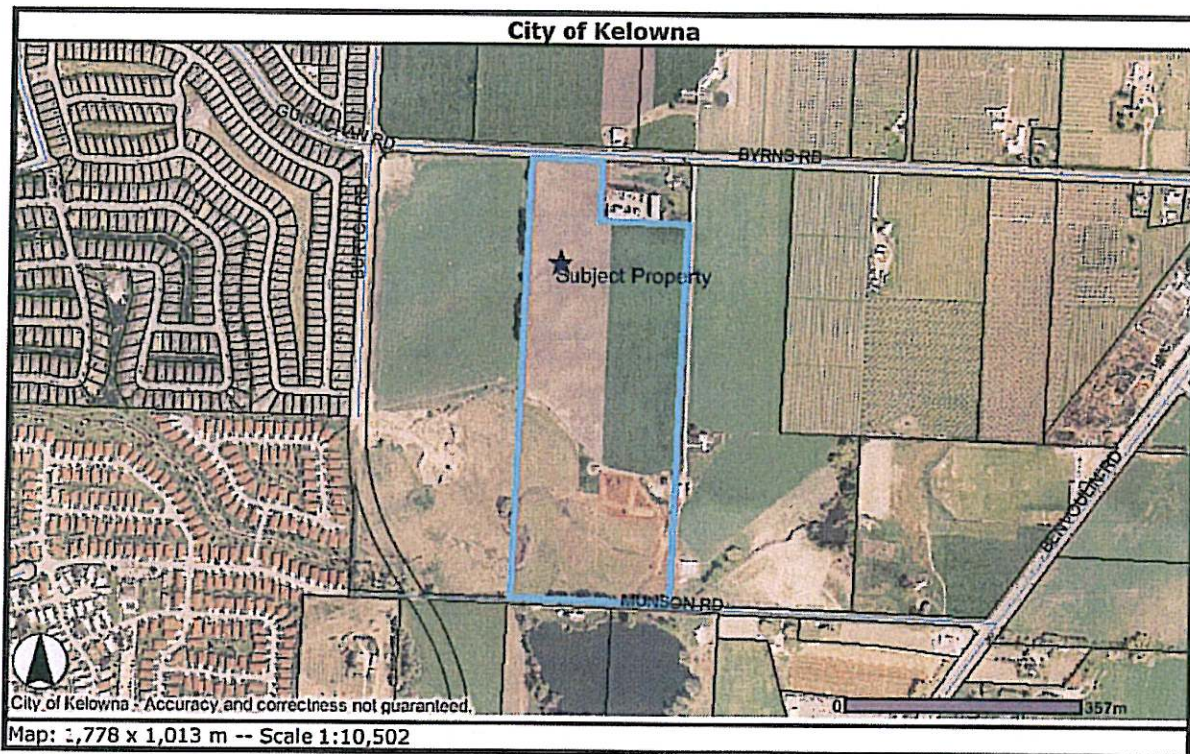
Doug Gilchrist, PMP, RI(BC)
Director, Real Estate & Building Services

Approved for inclusion:



John Vos, General Manager, Community Services

cc: K. Grayston, Director, Financial Services



This map is for general information only. The City of Kelowna does not guarantee its accuracy. All information should be verified.

LEASE AGREEMENT

THIS AGREEMENT made the 1st day of December, 2009.

BETWEEN:

CITY OF KELOWNA, a municipal corporation having its offices at
1435 Water Street, in the City of Kelowna, in the Province of
British Columbia, V1Y 1J4

(hereinafter called the "City")

OF THE FIRST PART

AND:

TIMOTHY MUNSON
1759 Munson Road
Kelowna, British Columbia
V1W 2G8

(hereinafter called the "Tenant")

OF THE SECOND PART

WITNESSETH that in consideration of the rents, covenants, and agreements hereinafter reserved and contained on the part of the Tenant, to be paid, observed and performed, the City hereby demises and leases unto the Tenant the premises hereinafter described all on the terms, conditions and covenants as hereinafter set forth.

- 1.01 **THE PREMISES.** The Premises hereby leased comprise those properties as described in Schedule "A"; the said properties are hereinafter referred to as the "Premises".
- 2.01 **TERM OF THE LEASE.** TO HAVE AND TO HOLD the said Premises for one (1) year from the 1st day of December, 2009 to and including the 30th day of November, 2010, subject to Articles 6.12 and 6.21 herein.
- 3.01 **RENT.** YIELDING AND PAYING to the City rental for the Premises, the sum of One Thousand Five Hundred (\$1,500.00) Dollars per annum payable on or before the 13th day of November each year.
- 4.00 **TENANT'S COVENANTS.** The Tenant covenants with the City:
- 4.01 **RENT.** To pay rent.

- 4.02 **USE.** Not to use the premises for any purpose other than normal farming practices or such activity as may be properly authorized in writing by the City, and to operate to the satisfaction of the City and in accordance with any conditions or requirements as may from time to time be detailed by the City.
- 4.03 **BUSINESS LICENCES AND PERMITS.** That it will procure and maintain, at the cost and expense of the Tenant, such licences, permits or approvals from any Federal, Provincial, Municipal or other Government authorities, including water permits and/or licences required in connection with the business of farming, and such private permits as may be necessary in respect of the business of the Tenant, the said leased premises and the operations of the Tenant hereunder, or any part thereof.
- 4.04 **INSURANCE.** The Tenant shall, at his own expense, maintain and keep in force during the term of this Agreement, the insurance coverage listed in this Article. The "deductible or reimbursement" for any insurance policy required under this Article shall not exceed Five Thousand (\$5,000.00) Dollars per claim.

The Tenant shall at the time the contract is signed, submit to the City a certificate for all insurance policies or certified copies of the insurance policies (if requested) required under this Article and shall also provide the City from time to time, as may be required, satisfactory proof that such policies are still in full force and effect.

Each insurance policy required under this Article shall contain an endorsement to provide all named insureds with prior written notice of changes and cancellations. Such endorsement shall be in the following form:

"It is understood and agreed that the coverage provided by this policy will not be changed or amended in any way or cancelled until thirty (30) days after written notice of such change or cancellation shall have been given or sent by registered mail to all named insureds."

Whenever the word "City" is to appear in the insurance policies, the legal name shall be inserted.

- 4.05 **LIABILITY INSURANCE.** The Tenant shall be responsible for a policy of public liability and property damage insurance in an amount of no less than Two Million (\$2,000,000.00) Dollars against liabilities or damages in respect of injuries to persons (including injuries resulting in death) and in respect of damage arising out of the performance of this Agreement. Participant coverage may also be required at the discretion of the City.

The City of Kelowna shall be a named insured on the policy. The policy shall preclude subrogation claims by the insurer against anyone insured thereunder. In addition, such insurance policy shall include the following 'Cross Liability' clause:

"The insurance afforded by this policy shall apply in the same manner, as though separate policies were issued, to any action

brought against any of the named insured by or on behalf of any other named insured."

- 4.06 **NOT TO VOID INSURANCE.** Not to do or permit anything to be done which would render any other policy of insurance on the Premises or any part thereof void or voidable or which would cause an increase in the insurance premiums. In the event that the Tenant does anything that would cause an increase in the insurance premiums on the Premises, the Tenant shall pay to the City that amount which represents the increase in the insurance premium by virtue of the Tenant's use or occupation of the Premises.
- 4.07 **AUTOMOTIVE INSURANCE.** The Tenant shall licence and insure for business purposes to a minimum of Two Million Dollars (\$2,000,000.00) public liability and property damage, all automotive equipment used by the tenant in the conduct of the business provided for in this Agreement.
- 4.08 **APPLICATION OF PESTICIDES.** To ensure that the application of sprays and/or pesticides used in connection with the agricultural business is only performed by a licensed applicator.
- 4.09 **ASSIGNMENT.** The Tenant shall not assign or sub-license in whole or in part without the City's prior consent in writing, which consent may be withheld without reason. The Tenant also agrees to reimburse the City for all costs that it may incur to effect any assignment at the Tenant's request. The minimum amount for such assignment shall be \$300.00.
- 4.10 **USE OF PREMISES.** Not to use the Premises for any purpose other than normal farming practices or such activity as may be properly authorized in writing by the City, and to operate to the satisfaction of the City and in accordance with any conditions or requirements as may from time to time be detailed by the City.
- 4.11 **NO OTHER AGREEMENT.** No verbal agreements or conversations with any officer, agent, or employee of the City, either before or after the execution of this Agreement, shall affect or modify any of the terms or obligations herein contained.
- 5.0 **CITY'S COVENANTS.** The City covenants with the Tenant:
- 5.01 **QUITE ENJOYMENT.** For quiet enjoyment of the Premises.
- 6.0 **PROVIDED ALWAYS AND IT IS HEREBY AGREED AS FOLLOWS:**
- 6.01 **PROVISO FOR RE-ENTRY ON DEFAULT.** If and whenever the rent is not paid in full when due or in case of breach of, or non-observance or non-performance by the Tenant of any of the provisions of this Agreement, and if the default continues for TEN (10) days after written notice thereof to the Tenant, or if the Premises are vacated or remain unoccupied for TEN (10) days, the term shall be taken in execution or attachment for any cause whatever, then, in every such case, the City, in addition to any other remedy now or hereafter provided by law may, at its option, cancel this Agreement and re-enter and take possession of the Premises or any part thereof by force if

necessary, without any previous notice of intention to re-enter and may remove all persons and property therefrom and may use such force and assistance in making such removal as the City may deem advisable and such re-entry shall not operate as a waiver or satisfaction in whole or in part of any right, claim, or demand arising out of or connected with any breach or violation by the Tenant of any covenant or agreement on its part to be performed.

- 6.02 **ALTERATIONS BY TENANT.** The Tenant agrees not to make any alterations, additions or improvements in or to the Premises without obtaining the City's prior written consent and all such work shall be done only by contractor's or tradesmen or mechanics approved in writing by the City and at the Tenant's sole expense and at such time, in such manner as the City may approve.
- 6.03 **REMOVAL OF ALTERATIONS BY TENANT.** If any alterations, additions or improvements are made to the Premises by the Tenant, it shall, on the written request of the City, restore the Premises to their condition at the commencement of the term of this Agreement not later than fifteen (15) days prior to the termination of this Agreement or, if the City would prefer any alterations, additions and improvements remain, the City may require the Tenant to restore the Premises to such extent as the City may deem expedient although retaining as far as possible the alteration, additions and improvements, without any compensation to the Tenant.
- 6.04 **REMOVAL OF TENANT'S PROPERTY.** All articles of personal property and all business and trade fixtures, machinery and equipment and furniture owned by the Tenant or installed by the Tenant on the Premises at the Tenant's expense shall remain the property of the Tenant and may be removed by the Tenant at any time during the term of this Agreement, PROVIDED THAT the Tenant, at its own expense, shall repair any damage to the Premises caused by such removal or by the original installation.
- 6.05 **NO WARRANTY OF SERVICES BY CITY.** The City does not warrant that any service or facility provided by it in accordance with the provisions of this Agreement will be free from interruption caused by any cause beyond the City's reasonable care and control. No such interruption shall be deemed to be a disturbance of the Tenant's enjoyment of the Premises nor render the City liable for injury to or in damages to the Tenant nor relieve the parties from their obligations under this Agreement. The City shall without delay take all reasonable steps to remove the cause of any such interruption.
- 6.06 **CITY NOT LIABLE FOR INTERFERENCE.** The City shall not be liable to the Tenant for any interference or inconvenience caused by the labour dispute or by damage to the Premises or by repairs, alterations, improvements or construction in or adjacent to the Premises, or by failure or interruption of any supply of any utility.
- 6.07 **CITY NOT LIABLE FOR INJURY TO TENANT.** The City shall not be liable for any injury or damage to the Tenant, his agents, employees, customers or invitees as to any of their property while on the Premises, regardless of the cause of such injury or damage except such injury or damage which may be caused by the negligence of the City, its agents, servants or employees.

- 6.08 **INDEMINIFICATION.** The Tenant agrees to reimburse the City for all expense, damages, loss or fines incurred or suffered by the City by reason of any breach, violation or non-performance by the Tenant of any covenant or provision of this Agreement or by reason of damage to the premises, persons or property caused by the Tenant, its employees or agents or persons visiting or doing business with the Tenant. The Tenant further covenants and agrees to save and hold harmless the City, its officers, agents, servants and employees, from and against any and all suits or claims alleging damage or injury (including death) to any person or property that may occur or that may be alleged to have occurred, in the course of the term of this Agreement, whether such claim shall be made by an employee of the Tenant, or by a third person and whether or not it shall be claimed that the alleged damage or injury (including death) was caused through a wilful or negligent act or omission of the Tenant, its officers, servants, agents or employees; and at its own expense, the Tenant shall defend any and all such actions and pay all legal charges, costs, and other costs arising therefrom.
- 6.09 **NO REPRESENTATION.** The Tenant agrees that it has rented the Premises after examining the same and that no representations, warranties or conditions have been made other than those expressed herein, and that no agreement collateral hereto shall be binding upon the City unless it be made in writing and signed on behalf of the City.
- 6.10 **ABATEMENT OF RENT.** If the Premises are damaged by any cause for which the City is responsible by virtue of some act or neglect by the City, its servants or agents, then the rent shall be abated in whole or in part according to the portion of the Premises which is not usable by the Tenant until such damage is repaired.
- 6.11 **DAMAGE OR DESTRUCTION OF PREMISES.** Subject to the provisions of Article 6.12, if the Premises shall be damaged by fire or other casualty against which the City is insured, the damage to the Premises shall be repaired by the City with reasonable diligence at its expense except that repairs or alterations, additions or improvements made by the Tenant shall be performed by the City at the expense of the Tenant and the Tenant shall, at its own expense, make all repairs and replacements of property which belongs to the Tenant.
- 6.12 **PREMISES RENDERED UNTENABLE.** If the Premises are rendered untenable by fire or other casualty against which the City is insured and if the City shall decide not to restore the same, the City shall, within ninety (90) days after such fire or other casualty, give the Tenant a notice in writing of such decision and thereupon the term of this Agreement shall expire forthwith and the Tenant shall vacate the Premises and surrender the same to the City. Upon the termination of this Agreement under the provisions of this Article, the Tenant's liability for rent shall cease as of the day following the fire or other casualty.
- 6.13 **RIGHT OF ENTRY TO MAKE REPAIRS.** The Tenant agrees that the City shall have the right to enter the Premises at all reasonable times to examine the same and make such repairs, alterations, improvements or additions as the City may deem necessary or desirable or as the City may be required to make by law. The City shall be allowed to take onto the Premises all material which may be required for such purpose and the rent reserved shall in no way abate while such repairs, alterations, improvements or additions

- 6.14 are being made by reason of interruption of the business of the Tenant. The City will exercise reasonable diligence as to minimize the disturbance or interruption of the Tenant's operations.
- 6.15 **DISTRAINT.** If the City levies distress against the goods and chattels of the Tenant, such force as may be deemed necessary for the purpose and for gaining admission to the Premises may be used without the City being liable for any action in respect thereof or for any loss or damage occasioned thereby and the Tenant hereby expressly releases the City, its employees and agents from all actions, proceedings, expressly released the City, its employees and agents from all actions, proceedings, claims or demands whatsoever for or on account or in respect of any such forcible entry or any loss or damage sustained by the Tenant in connection therewith.
- 6.16 **COSTS OF RECOVERY OF RENT.** If the City shall consider it desirable to retain the services of a lawyer or any other person reasonably necessary for the purpose of assisting the City in enforcing any of its rights hereunder in the event of default on the part of the Tenant, it shall be entitled to collect from the Tenant the cost of all such services as if the same were rent.
- 6.17 **INTEREST ADDED TO COSTS OF DEFAULT.** Without prejudice to any other remedy of the City, any money payable by the Tenant to the City hereunder, other than the rent referred to in Article 3 of this Agreement, shall be deemed to be rent and shall be subject to "Interest Penalty on Overdue Rent" as outlined in Article 6.18 of this Agreement from the date due or the date the City shall have paid out the same, and shall be paid as additional rent and shall be collectable as rent unless otherwise provided in this Agreement, shall be payable with the next ensuing instalment of rent.
- 6.18 **INTEREST PENALTY ON OVERDUE RENT.** Without waiving any right of action of the City in event of late payment or default of payment of rents due herein, the Tenant shall pay a penalty of two (2%) percent per month or any portion thereof compounded monthly (26.82% per annum) effective from the day the amount is due. In order to reflect prevailing interest rates, the City may review and adjust the penalty rate from time to time.
- 6.19 **NO WAIVER.** The failure of the City to insist upon strict performance of any covenant or condition in this Agreement or to exercise any right or option hereunder shall not be construed or operate as a waiver or relinquishment for the future of such covenant, condition or option and no waiver shall be inferred from or implied by anything done or omitted by the City save only express waiver in writing. The acceptance of any rent or the performance of any obligation hereunder by a person other than the Tenant shall not be construed as an admission by the City of any right, title or interest of such person as a sub-tenant, assignee, transferee or otherwise in the place and stead of the Tenant.
- 6.20 **OVERHOLDING.** If the Tenant shall continue to occupy the Premises after the expiration of the existing tenancy hereby granted and the City shall accept rent, the new tenancy thereby created shall be deemed to be a monthly tenancy and shall be subject to the covenants and conditions contained in this Agreement insofar as the same are

applicable to a tenancy from month to month save and except that the rental payment shall be as determined by the City.

6.21 **ENUREMENT.** This Agreement and everything herein contained shall enure to the benefit of and be binding upon the parties and their heirs, executors, administrators, successors and permitted assigns. Wherever the singular or masculine is used the same shall be construed as meaning the plural or feminine or body corporate or politic as the context may require.

6.22 **TERMINATION OF LEASE.** If at any time during the term of this Agreement, the City requires the Premises for redevelopment, the Tenant shall be given six (6) months notice, in writing, and the Agreement will be terminated, without penalty.

IN WITNESS WHEREOF the parties hereto have hereunto affixed their signatures in the presence of witnesses, or have hereunto set their hands and seals, as the case may be, on the day and year first above written.

SIGNED, SEALED and DELIVERED by the)
City in presence of:)

_____)
Signature of Witness)

_____)
Name of Witness)

_____)
Address)

_____)
Occupation)

CITY OF KELOWNA by its authorized
signatories:

_____)
Mayor

_____)
City Clerk

SIGNED, SEALED and DELIVERED by the)
Tenant in presence of:)

DL)
Signature of Witness)

TAMMY ABRAHAMSON)
Name of Witness)

209-246 LAWRENCE AVE, HEL)
Address)

PROPERTY OFFICER)
Occupation)

Timothy Munson

Timothy Munson

SCHEDULE "A"

PREMISES:

The premises are those lands situated in the City of Kelowna and legally described as:

1. Lot 12, District Lot 130, Osoyoos Division Yale District, Plan 415 shown on Plan B14830 except Plan B5905, located on 1649 Byrns Road;
2. Portion of Lot 5, District Lot 130, Osoyoos Division Yale District, Plan 415, located at 1609 Munson Road; and
3. Portion of Lot 6, District Lot 130, Osoyoos Division Yale District, Plan KAP78252, located at 1759 Munson Road.

(hereinafter called the "Premises")

SCHEDULE "A"



This map is for general information only. The City of Kelowna does not guarantee its accuracy. All information should be verified.

LICENCE

THIS AGREEMENT dated for reference the 1st day of December, 2009

BETWEEN:

CITY OF KELOWNA, a municipal corporation having its
office at 1435 Water Street, Kelowna, BC., V1Y 1J4

(the "City")

OF THE FIRST PART

AND:

TIMOTHY MUNSON
1759 Munson Road
Kelowna, BC V1W 2G8

(the "Licensee")

OF THE SECOND PART

WHEREAS:

- A. The City acquired a portion of the lands owned by the Licensee for the purpose of dedicating and construction of a public highway, which portion is shown as "Road" on the Reference Plan registered under Registration No. KAP78252 (the Licence Area), a copy of which is attached to this Agreement as Schedule "A";
- B. The construction of the public highway is not planned to commence until approximately one (1) year from the date of dedication of this Agreement;
- C. The Licensee has previously cultivated the portion of its property dedicated as highway and wishes to continue growing and harvesting crops and the City is agreeable to granting the Licensee a licence to use the dedicated road area to do so until the anticipated commencement date for construction of the highway;
- D. Section 35(11) of the *Community Charter*, R.S.B.C. 2003, c. 26 authorizes municipalities to grant a licence of occupation or an easement or to permit an encroachment in respect of a highway vested in a municipality.

NOW THEREFORE in consideration of the sum of One (\$1.00) Dollar and other good and valuable consideration passing from the Licensee to the City, the receipt and sufficiency of which is hereby acknowledged by the City, the parties agree as follows:

- 1. The City hereby grants to the Licensee, his employees, agents and contractors, a contractual right and licence to enter and use the Licence Area for the purpose of cultivating the land, harvesting and removing the crops grown on the Licence Area. The licence granted herein includes the right to enter the Licence Area with such machinery and equipment as is required to carry out the cultivation, harvesting and removal of the crops.

2. The rights granted to the Licensee herein may be exercised up to November 30, 2010, at which time the licence shall expire.
3. The Licensee accepts the Licence Area on an as-is basis and agrees that it will use the Licence Area at its own risk and that the City will not be liable in respect of any damage to or loss of property or for any personal injury or loss of life.
4. Any notice given pursuant to this Agreement will be sufficiently given if it is in writing and delivered personally or mailed by prepaid mail to the intended party at the address set out on Page 1 of this Agreement.
5. This Agreement will bind and benefit each party to this Agreement and its respective successors, administrators, employees, agents and contractors.
6. The Schedule attached to this Agreement forms part of this Agreement.
7. This Agreement constitutes the entire agreement between the parties and may not be amended except by agreement in writing signed by all parties to this Agreement.

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

SIGNED AND DELIVERED by the **City** in)
the presence of:)

Signature of Witness)

Print Name)

Address)

Occupation)

*As to both signatures)

CITY OF KELOWNA by its authorized
signatories:

Mayor

City Clerk

SIGNED AND DELIVERED by the
Licensee in the presence of:



Signature of Witness

TAMMY ABRAHAMSON


Print Name

209-346 LAWRENCE AVE, KEC.

Address

PROPERTY OFFICER

Occupation



Timothy Munson

Schedule "A"

505-0034

SUBDIVISION PLAN OF LOT 4, PLAN 415, D.L'S 130 AND 147, O.D.Y.D.

B.C.G.S 82E083

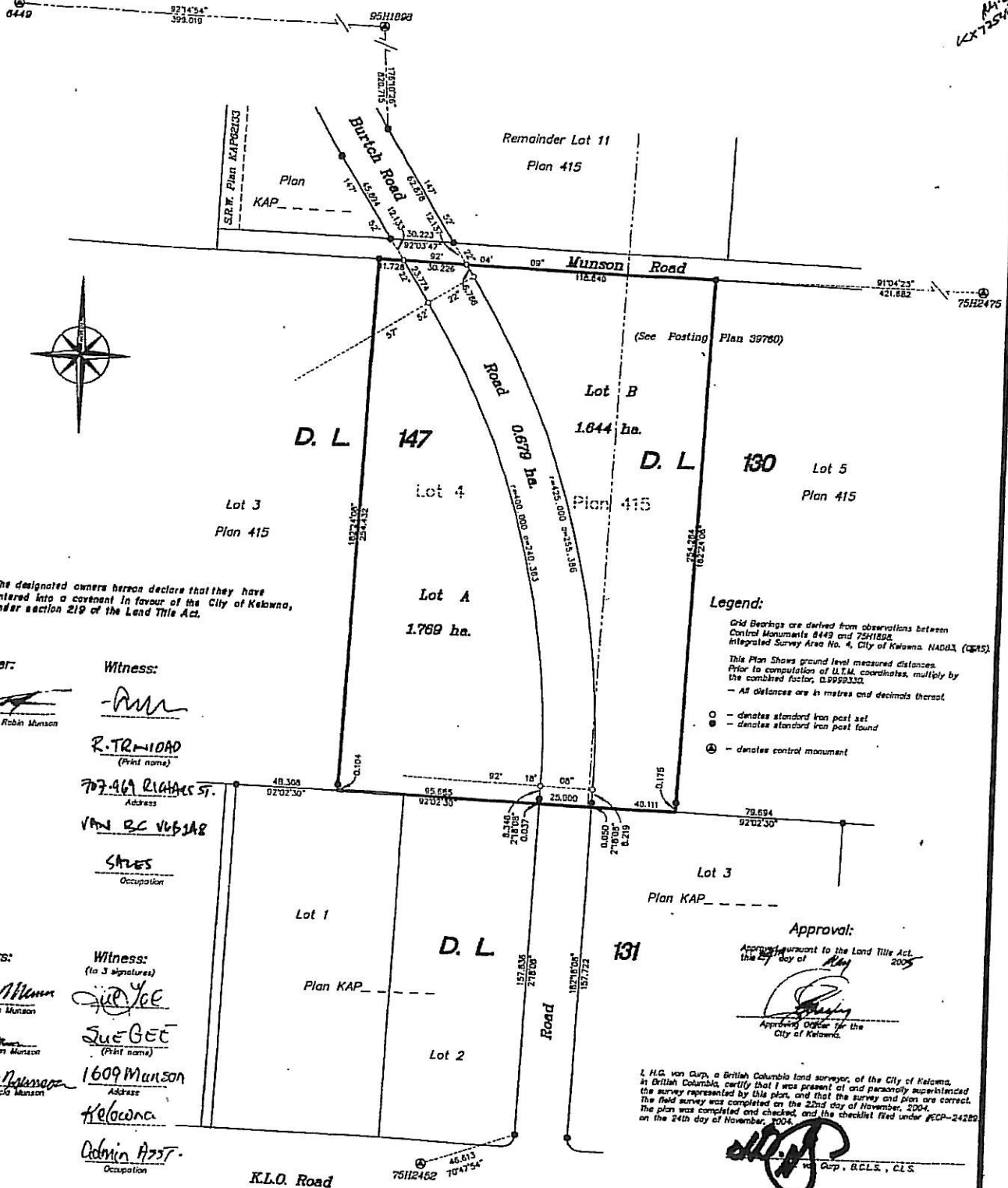
Scale: 1:1250 (Metric)
0m 10m 25m 50m 100m 125m

Plan KAP 78252

Deposited in the Land Title Office at Kelowna, B.C.,
This 8th day of June, 2005

S. Kuzhika
Deputy Registrar

Mr. D
KX72548



The designated owners hereon declare that they have entered into a covenant in favour of the City of Kelowna, under section 219 of the Land Title Act.

Owner:

Witness:

Patrick Robin Munson
Patrick Robin Munson

R. TRINIDAD
(Print name)

707-961 RIATAS ST.
Address

VAN BC V6B3A8

SALES
Occupation

Owners:

Witness:
(in 3 signatures)

Timothy Ian Munson
Timothy Ian Munson

Stephen Alan Munson
Stephen Alan Munson

Wendy Patricia Munson
Wendy Patricia Munson

SUE GEE
(Print name)

1609 Munson
Address

Kelowna

Admin Asst.
Occupation

Legend:

Old Bearings are derived from observations between Control Monuments 8449 and 75H1892.
Integrated Survey Area No. 4, City of Kelowna, NAD83 (Q1985).
This Plan Shows ground level measured distances.
Prior to computation of U.T.M. coordinates, multiply by the combined factor, 0.9999333.
- All distances are in metres and decimals thereof.
○ - denotes standard iron post set
● - denotes standard iron post found
⊙ - denotes control monument

Approval:

Approved pursuant to the Land Title Act,
this 27th day of May, 2005

[Signature]
Approving Officer for the
City of Kelowna

I, H.G. van Gurp, a British Columbia land surveyor, of the City of Kelowna, in British Columbia, certify that I was present at and personally supervised the survey represented by this plan, and that the survey and plan are correct. The field survey was completed on the 22nd day of November, 2004. The plan was completed and checked, and the checklist filed under KCP-24289 on the 24th day of November, 2004.

[Signature]
van Gurp, B.C.L.S., C.L.S.

VAN GURP & COMPANY
land surveyors
201-1470 St. Paul Street,
Kelowna, B.C. (250) 763-5711

F.B. 509(46) File: 15308up

This Plan lies within the Central Okanagan Regional District.