

REPORT TO COUNCIL



Date: June 27, 2012

To: City Manager

From: Land Use Management, Community Sustainability (BD)

Application: Z12-0048

Owner: 4G Developments Ltd. Inc.
No. BC0926540

Address: 2463 & 2473 Pandosy Street

Applicant: Robert Gaspari

Subject: Rezoning Application

Existing OCP Designation: MRL - Multiple Unit Residential (Low Density)

Existing Zone: RU1- Large Lot Housing

Proposed Zone: RM3- Low Density Multiple Housing

1.0 Recommendation

THAT Rezoning Application No. Z12-0048 to amend the City of Kelowna Zoning Bylaw No. 8000 by changing the zoning classification of Lot A, District Lot 14, ODYD Plan EPP17675 and Lot 20 District Lot 14, ODYD Plan 1141, Except Plan KAP60686, located on Pandosy Street, Kelowna, BC from the RU1- Large Lot Housing zone to the RM3- Low Density Multiple Housing zone be considered by Council;

AND THAT the zone amending bylaw be forwarded to a Public Hearing for further consideration;


AND THAT Bylaw No. 10732 authorizing a Housing Agreement between the City of Kelowna and 4G Developments Ltd. Inc. No. BC0926540, which requires the owners to designate 1 dwelling unit as an affordable rental unit in perpetuity on Lot A, District Lot 14, ODYD Plan EPP17675 and Lot 20 District Lot 14, ODYD Plan 1141, located on Pandosy Street, Kelowna, BC be forwarded for reading consideration;

AND THAT final adoption of the Zone Amending Bylaw be considered in conjunction with Council's consideration of a Development Permit and a Development Variance Permit for the subject property;

AND THAT final adoption of the Zone Amending Bylaw be considered subsequent to the issuance of a Preliminary Layout Review Letter by the Approving Officer;

AND THAT final adoption of the Zone Amending Bylaw be considered subsequent to the applicant/owner paying the outstanding Bylaw Notice Ticket fine related to the subject property;

AND FURTHER THAT final adoption of the zone amending bylaw be considered subsequent to the requirements of Development Engineering Branch and Fortis BC completed to their satisfaction.



2.0 Purpose

This application is seeking to rezone the subject properties from the RU1- Large Lot Housing zone to the RM3 - Low Density Multiple Housing zone to develop a six-plex on the consolidated site. An Affordable Housing Agreement is proposed for one unit to secure the increased floor area ratio required for the project.

3.0 Land Use Management

The applicant is proposing to construct a three-plex on 2463 Pandosy Street and legalize the three-plex on 2473 Pandosy Street. The subject properties are designated as Multiple Unit Residential - low density in the Official Community Plan and as such the RM3 - Low Density Multiple Housing proposed is in compliance. A Housing Agreement is sought to secure one dwelling as an affordable unit to maximize the density potential for the parcels. A subdivision application to consolidate the two sites is being processed concurrently.

The subject properties are located in an area of established older neighbourhoods close to the Pandosy urban area. The area is well serviced with amenities including transit, parks, schools and bike lanes. Few multi-unit buildings are located in the immediate vicinity, with the exception of some scattered RM1- fourplex dwellings.

Staff are concerned that rezoning the property after development has already occurred does not allow for comprehensive consideration of structural design and siting of the multiple-unit development. Given that one of the buildings was previously constructed, design amendments are limited in terms of practical upgrades. However, the applicant has worked with staff to enhance pedestrian activity and orientation to the streets through design amendments to satisfy some of these concerns.

Although Staff do not support the creation of multiple family dwellings without the proper authorization in place, the applicant has been forthcoming with their plans and have worked to create a reasonable housing form in a transitioning area.

4.0 Proposal

4.1 Background

At the time the 2030 OCP was adopted, the future land use designation of this area was changed from Single/Two Residential to Multiple Unit Residential - low density, as such the area is transitioning. Much of the housing stock along this section of Pandosy consists of older small homes, or single family dwellings that have fences or large vegetative hedges along this arterial road. Currently, no multiple family developments exist in the area with the exception of some scattered RM1- Four Dwelling Housing zoned sites.

A Development Permit for a single family dwelling with a secondary suite was issued for the south property in early 2012. It has become known that the building may already have been converted to a three-plex given that Fortis provided 3 electrical meters. By rezoning the two properties, the applicant seeks to legalize the existing building and permit the construction of a second three-plex on the site. As part of the application, the two legal lots will need to be consolidated to meet the minimum subdivision regulation for the RM3 - Low Density Multiple Housing zone. It is noteworthy that the subject properties have been subject to recent bylaw activity.

4.2 Project Description

Once the site is consolidated, required lot area and frontage to permit the RM3 zone is achieved. The site then conforms to the requirements, except for the rear yard set back, which at the time the south dwelling was constructed was considered a sideyard and thus adequate space for a rear yard was not allocated. A variance is being sought for the rear yard setback.

The proposal shows two separate buildings, each with three 2 bedroom units. At 2 storeys in height, the buildings are taller than the current housing stock with the exception of some newly constructed dwellings. The existing building has entrances on all sides and screened from Pandosy with a full height wooden fence. The proposed building incorporates some articulation and greater finishing details than the existing building. Staff have worked with the applicant to ensure that there is a pedestrian interface with Francis Avenue and the plans show ground level entrances on the north elevation.

Parking is achieved through with angle parking on the east side of the yard utilizing a one way drive isle through to the laneway to the south of the site. Although not ideal, this method meets the regulations of the Zoning bylaw.

Council will have the opportunity to consider the exterior form and character of the proposal should they approve the land use. Two variances are sought:

1. to relax the rear yard setback to facilitate this development
2. to remove the requirement for public bicycle parking.

4.3 Site Context

The subject properties are located on the south east corner of Pandosy Street and Francis Avenue in the KLO/Pandosy sector of Kelowna. The surrounding properties are zoned as follows:

Orientation	Zoning	Land Use
North	RU6 - Two Dwelling Housing	Single Family Dwelling
East	RU6 - Two Dwelling Housing	Single Family Dwelling
South	RU6 - Two Dwelling Housing	Single Family Dwelling
West	RU1- Large Lot Housing	Single Family Dwelling

4.4 Subject Property Map : 2463 & 2473 Pandosy Street



4.5 Zoning Analysis Table

The proposed application meets the requirements of RM3 - Low Density Multiple Housing zone as follows:

Zoning Analysis Table		
CRITERIA	PROPOSAL	RM3 ZONE REQUIREMENTS
Subdivision Regulations		
Lot Area	1093 m ² (After consolidation of the two sites)	900 m ²
Lot Width	30.48 m	30.0 m
Lot Depth	37.18 m	30.0 m
Development Regulations		
Site Coverage (buildings)	28 %	40%
Site Coverage (buildings/parking)	49.4 %	50%
Height	2 storeys/ 8.48 m	2 ½ storeys / 9.5 m
Front Yard	4.5 m	4.5 m or 6.0 m for a garage
Side Yard (w)	4.5 m (5.2m prior to the road widening)	4.0 m (1 - 1 ½ storey) 4.5 m (2 - 2 ½ storey)
Side Yard (e)	9.43 m	4.0 m (1 - 1 ½ storey) 4.5 m (2 - 2 ½ storey)
Rear yard	3.5 m ①	7.5m
Distance between principal Buildings	7.11 m	3.0m
Other Requirements		
Floor Area Ratio	0.54	The maximum floor area ratio is 0.5, except it is 0.55 with a housing agreement pursuant to the provisions of Section 6.9

Parking Stalls (#)	2 bedroom units = 6 therefore $6 \times 1.5 = 9$ space plus 1 visitor parking stall required Total required & provided: 10 stalls	1.25 per 1-bedroom dwelling unit, 1.5 per 2-bedroom dwelling unit 2 per 3-or-more bedroom dwelling unit Of the total required spaces above, 1 parking space shall be designated visitor parking for every 7 dwelling units
Drive Isle	3.65 m one way isle provided	One way aisles shall be 5.5 m wide for 60° parking, 3.6 m wide for 45° parking and 3.5 m wide for parallel parking
Other Requirements		
Parking setbacks	Complies	2.0 m from front lot line; 1.5 m from side and rear lot lines
Bicycle parking	0 spaces provided ②	Class I: 0.5 per dwelling unit Class II: 0.1 per dwelling unit
Private Open Space	150m ²	15m ² per 1 bedroom dwelling 25m ² per 2 or more bedroom dwellings
Landscape requirements	<ul style="list-style-type: none"> • 1.5m buffer provided on east side yard • 2m high wood fence provided on west side yard & rear yard • Existing mature trees preserved & lawn provided for front yard 	Front yard: 3.0 m landscape buffer Rear & Side yard: 3.0m landscape buffer or Continuous opaque barrier

① A variance is being sought to relax the rear yard set back from 7.5m required to 3.5m proposed.

② A variance to remove the requirement for bicycle parking is requested.

4.0 Current Development Policies

4.1 Kelowna Official Community Plan (OCP)

Development Process

Policy 5.2.3 Complete Suburbs.¹ Support a mix of uses within Kelowna's suburbs (see Map 5.1 - Urban Core Area), in accordance with "Smart Growth" principles to ensure complete communities. Uses that should be present in all areas of the City (consistent with Map 4.1 - Future Land Use Map), at appropriate locations, include: commercial, institutional, and all types of residential uses (including affordable and special needs housing) at densities appropriate to their context.

¹ Official community plan Objective 5.2 Community Sustainability

Policy 5.3.2 Compact Urban Form.² Develop a compact urban form that maximizes the use of existing infrastructure and contributes to energy efficient settlement patterns. This will be done by increasing densities (approximately 75 - 100 people and/or jobs located within a 400 metre walking distance of transit stops is required to support the level of transit service) through development, conversion, and re-development within Urban Centres (see Map 5.3) in particular and existing areas as per the provisions of the Generalized Future Land Use Map 4.1.

5.0 Technical Comments

5.1 Building & Permitting Department

1) Development Cost Charges (DCC's) are required to be paid prior to issuance of any Building Permit(s) for new construction.

2) This property falls within the Mill Creek flood plain bylaw area and compliance is required. Minimum building elevations are required to be established prior to the release of the Development Permit.

3) Full Plan check for all other Building Code related issues will be done at time of Building Permit applications.

5.2 Bylaw Services

Mr. Gaspari has an unpaid Bylaw Notice Ticket fine from March 2012 as a result of building construction activity at this location. Bylaw Enforcement recommends that a condition of final adoption include paying the outstanding notice fine as it was not contested and has since gone to the City's Collection Agency.

5.3 Development Engineering Department

See attached.

5.4 Fire Department

No concerns.

5.5 Fortis BC (electric)

Prior to final approval of this application, the applicants must contact FortisBC at 1-866-436-7847 and quote their file # DP12-0059 to initiate all necessary arrangements for electrical service with this proposal. It is the developer's responsibility to ensure that all of FortisBC's requirements including construction fees and any SRWs that may be required have been addressed prior to receiving final approval.

5.6 Fortis BC Gas

Upon review of the property referral referencing the above noted matter, please be advised that the owner must abandon and/or alter existing gas service prior to development commencing. Once that order has been placed, FortisBC has no objection to the application. Should I be of further assistance do not hesitate to contact me directly.

² Official community plan Objective 5.3 Focus development to designated growth areas.

6.0 Application Chronology

Date of Application Received: May 31, 2012
Refinement of proposal submissions: June 27, 2012

Report prepared by:

Birte Decloux, Land Use Planner

Reviewed by:

A black ink signature, appearing to be 'DN', is written over a small square box.

Danielle Noble Manager, Urban Land Use

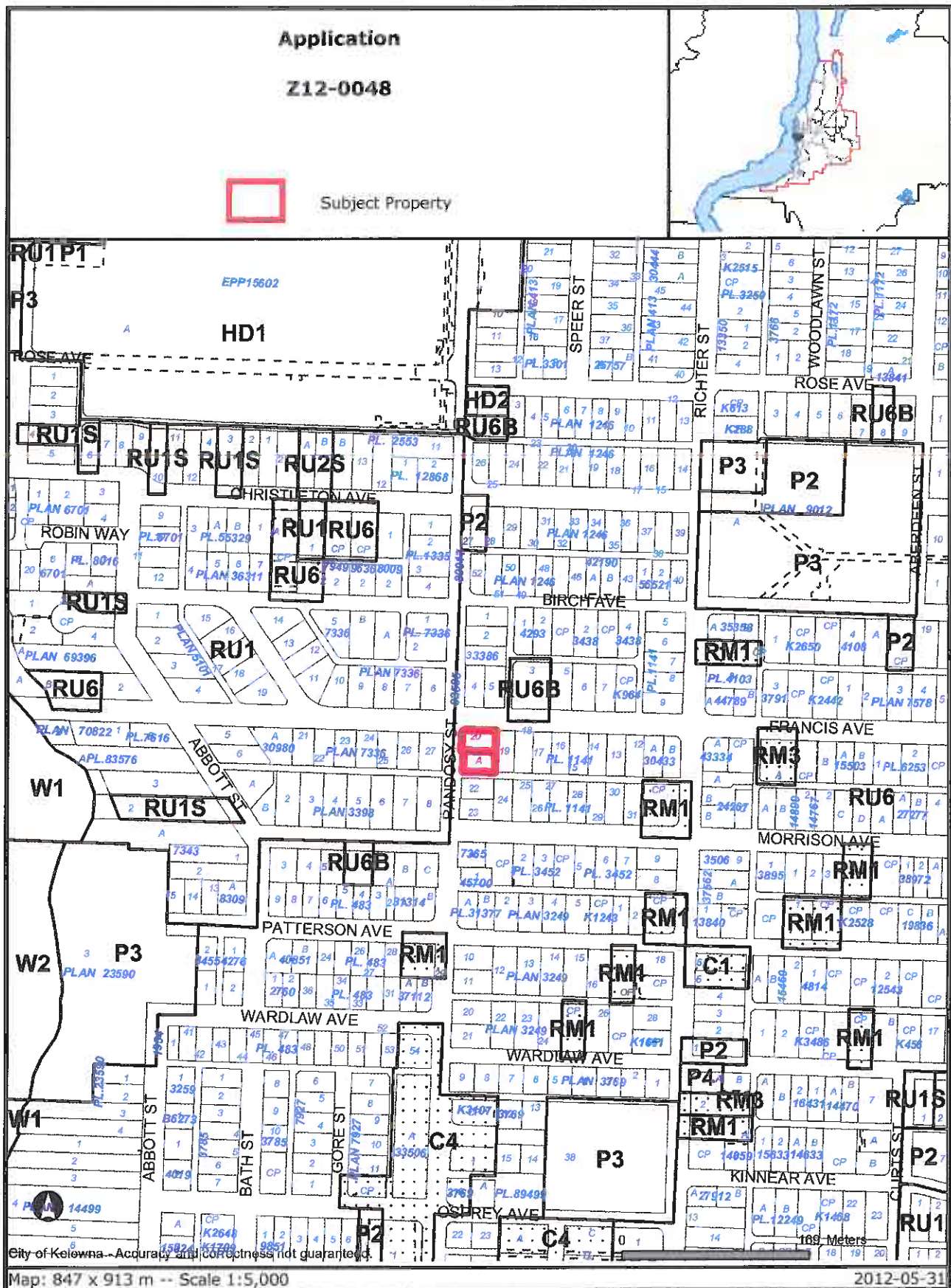
Approved for Inclusion:

A purple ink signature, appearing to be 'SG', is written over a small square box.

Shelley Gambacort, Director, Land Use Management

Attachments:

Site Plan
Conceptual Elevations
Landscape Plan
Context/Site Photos
Summary of Technical Comments

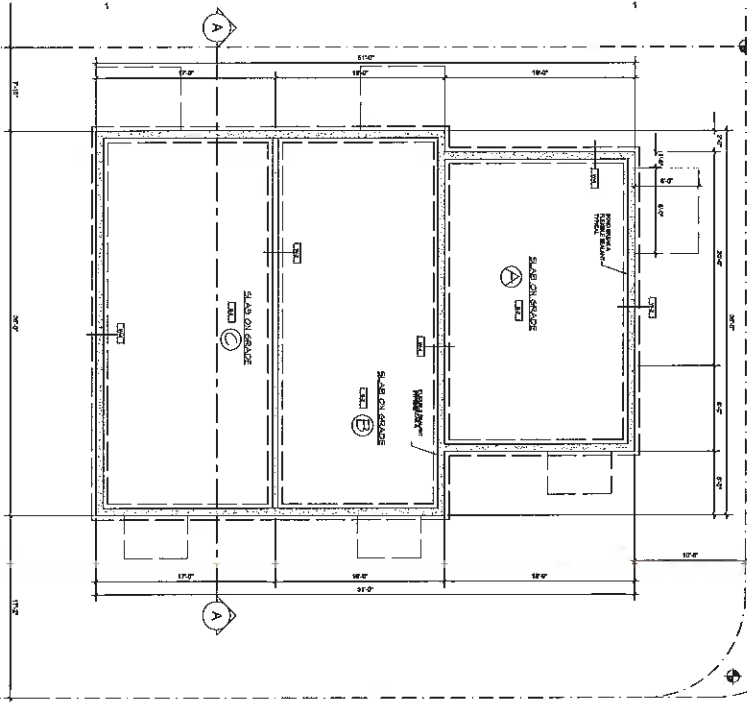


Certain layers such as lots, zoning and dp areas are updated bi-weekly. This map is for general information only.
The City of Kelowna does not guarantee its accuracy. All information should be verified.

PANDOSY STREET

6.56' [2M] R.W.

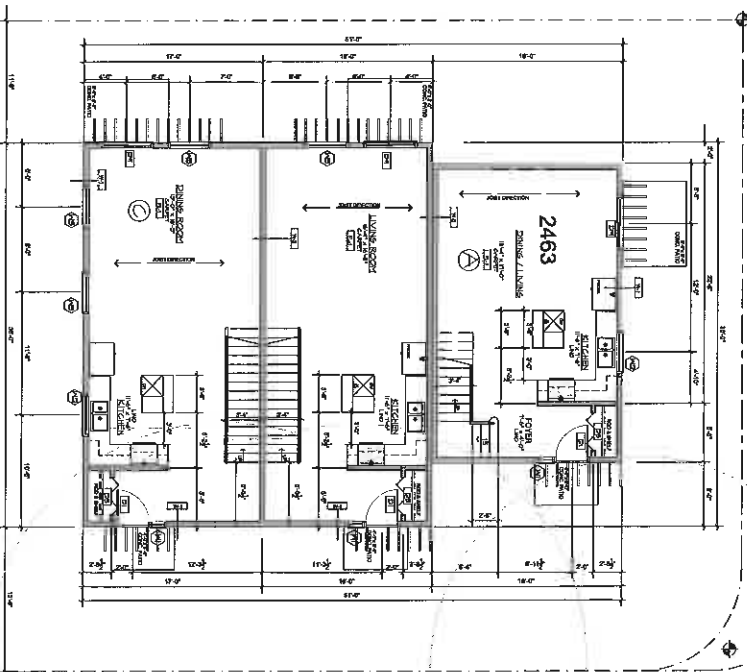
2463



FOUNDATION PLAN

PANDOSY STREET

6.56' [2M] R.W.



Floor Plan

TABLE 1	2463	2463
TABLE 2	2463	2463
TABLE 3	2463	2463
TABLE 4	2463	2463
TABLE 5	2463	2463

FRANCIS AVENUE

MAIN FLOOR PLAN

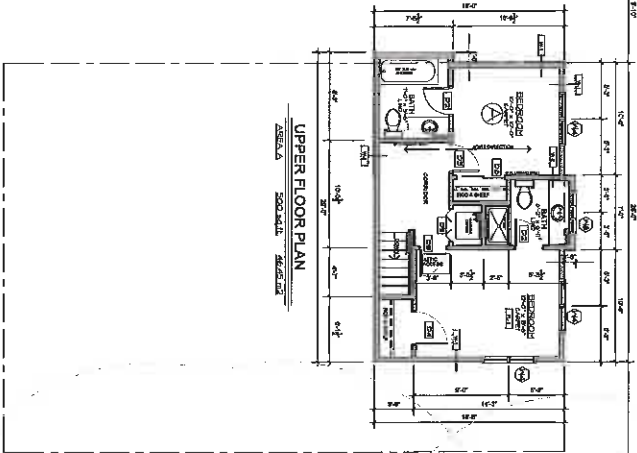
HOLDINGS ENGINEERING & DESIGN 1000 N. 10th St. Tulsa, OK 74103 Tel: 918.492.1111 Fax: 918.492.1112		2463 PANDOSY STREET TULSA, OKLA. 74103		PROJECT TITLE FOUNDATION / MAIN FLOOR PLANS		DATE 2/1/10		REV. A2		Rev. 1	
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PANDOSY STREET

6.56' (2M) R.W.

2463

UPPER FLOOR PLAN
AREA: 500 S.F. 1600 S.F.



FRANCIS AVENUE

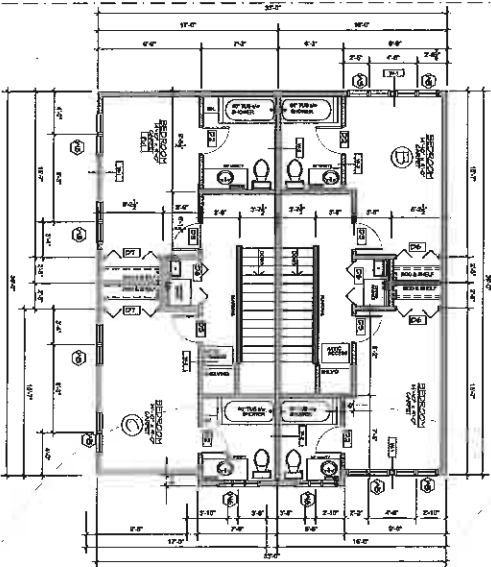
UNIT A / UPPER PLAN

PANDOSY STREET

6.56' (2M) R.W.

2463

UPPER FLOOR PLAN
AREA: 500 S.F. 1600 S.F.

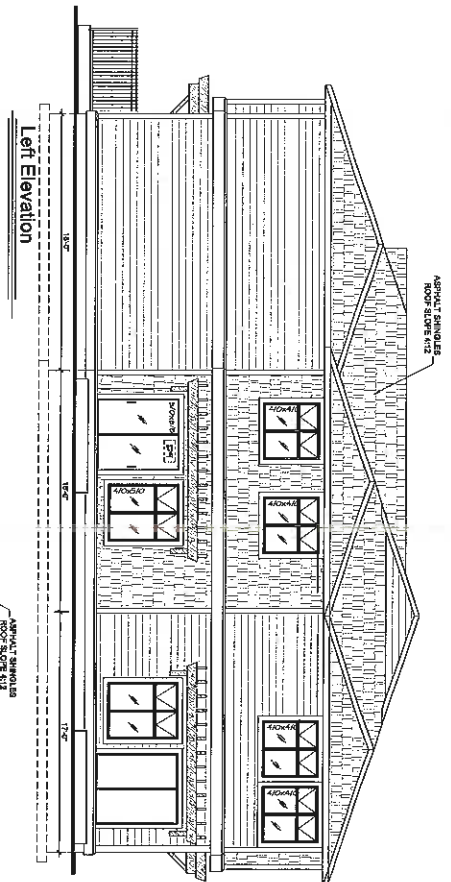


FRANCIS AVENUE

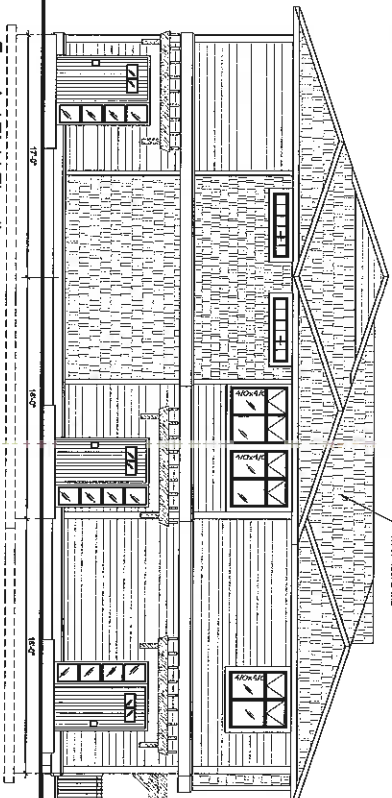
UNIT B / UPPER PLAN



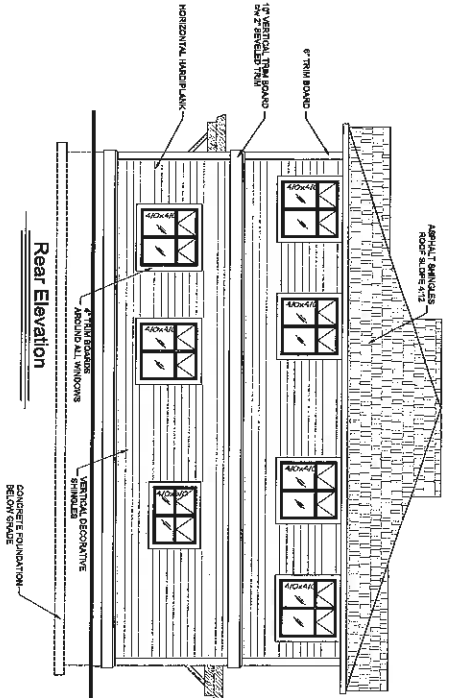
<p>HOLDINGS DAVIDSON & DESIGN 1000 W. 10TH ST. DENVER, CO 80202 TEL: 303.733.1111 WWW.DAVIDSONDESIGN.COM</p>		<p>PROJECT 3463 PANDOSY STREET KELOWNA, B.C.</p>	
<p>DATE 2014</p>		<p>REVISIONS</p>	
<p>NO.</p>		<p>DESCRIPTION</p>	
<p>1</p>		<p>UPPER FLOOR PLANS</p>	
<p>2</p>		<p>UNIT A / UNIT B</p>	
<p>3</p>		<p>Rev. 1</p>	



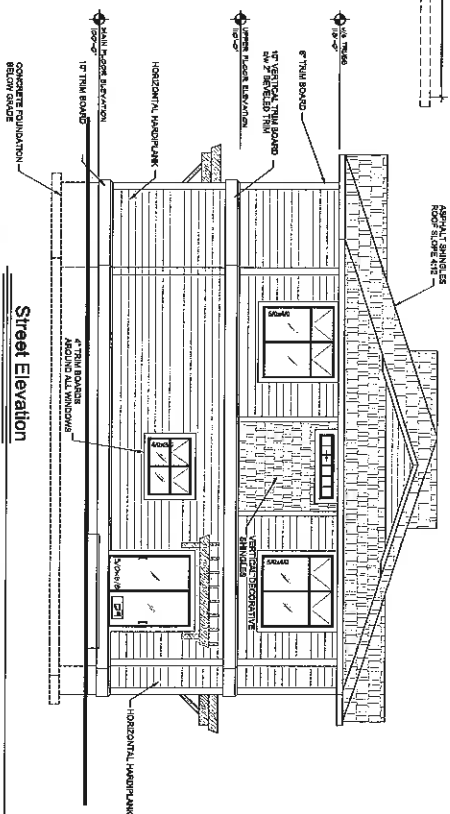
Left Elevation



Francis / Right Elevation



Rear Elevation



Street Elevation

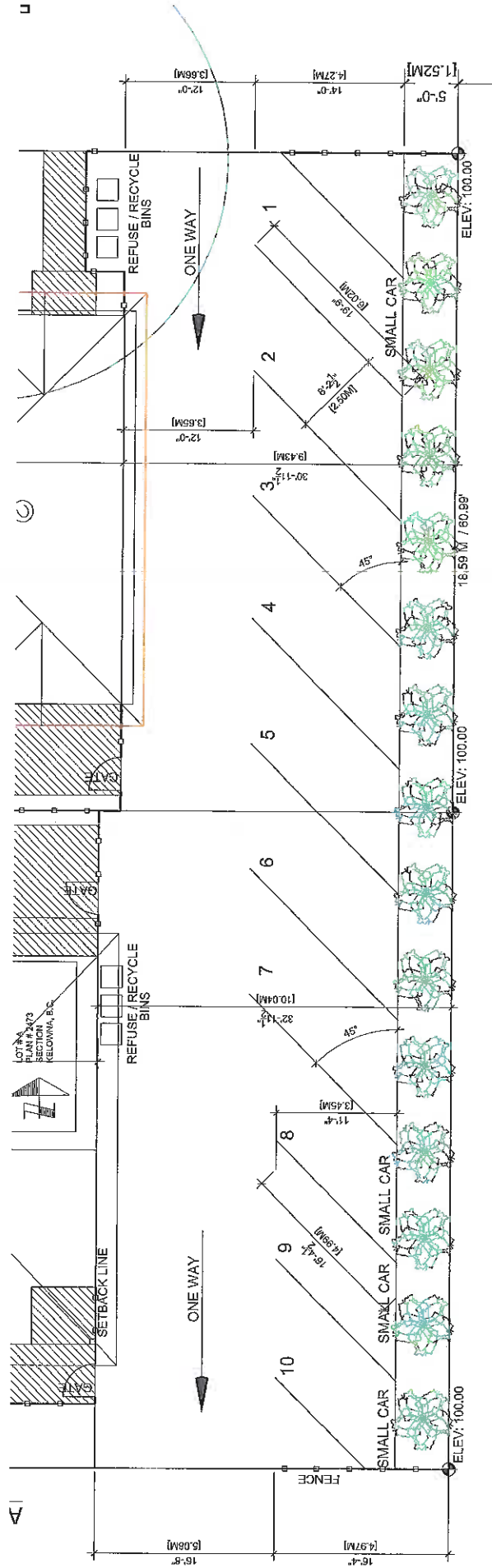
DATE	REV	DESCRIPTION
11/12/2017	A4	REVISIONS
11/12/2017	Rev. 1	2465 PARKWAY STREET RECONSTRUCTION ELEVATIONS

PROJECT	2465 PARKWAY STREET RECONSTRUCTION, LLC
DESIGNER	DAVIDSON & SONS ARCHITECTS 1200 10TH AVENUE SUITE 100 DENVER, CO 80202 TEL: 303.733.1111 WWW.DAVIDSONANDSONS.COM
DATE	11/12/2017
BY	DAVIDSON & SONS
CHECKED BY	DAVIDSON & SONS
SCALE	AS SHOWN
NOTES	1. ALL DIMENSIONS ARE TO FACE UNLESS NOTED OTHERWISE. 2. ALL MATERIALS AND FINISHES ARE TO BE AS SHOWN ON THE SCHEDULE. 3. ALL MATERIALS AND FINISHES ARE TO BE APPROVED BY THE ARCHITECT PRIOR TO INSTALLATION. 4. ALL MATERIALS AND FINISHES ARE TO BE INSTALLED IN ACCORDANCE WITH THE MANUFACTURER'S INSTRUCTIONS. 5. ALL MATERIALS AND FINISHES ARE TO BE INSTALLED IN ACCORDANCE WITH THE LOCAL BUILDING CODES.

REVISED PLANS

JUN 22 2012

CITY OF KELOWNA
Land Use Management



SITE PLAN

AFFORDABLE RENTAL HOUSING AGREEMENT

THIS AGREEMENT dated for reference _____, 2012 affects:

LEGAL DESCRIPTION OF PROPERTY SUBJECT TO THE AGREEMENT:

[INSERT LEGAL DESCRIPTION]

2463 & 2473 Pandosy Street (Which might have an new legal once the properties are consolidated)

("Lands")

And is

BETWEEN:

4G Developments Ltd.
(Robert Gaspari)
103 – 1658 Commerce Avenue
Kelowna, BC
V1X 8A9

("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 some affordable rental housing units, in accordance with the City's definitions, 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 affordable 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 -

"Affordable Rental" is the affordable rental rate published periodically by the City, being a calculation of average rents for Kelowna, using data from the annual Canada Mortgage and Housing Corporation ("CMHC") Rental Market Report as set out in Schedule "B";

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

"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.

"Gross Annual Income" means the sum of all taxable incomes, being the amount identified as taxable income on the most recent income tax return (line 260 of the income tax T1 General Form), of all individuals 15 years and older that reside in the Household.

"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;

"Maximum Allowable Income" means, in respect of an Affordable Rental Dwelling Unit, the threshold income level calculated according to the formula set out in Schedule "B";

"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;

"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 Dwelling Unit" means a dwelling designed to accommodate the needs of a Special Needs Individual, which unit may or may not also be an Affordable Rental Unit;

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

"Tenant" means a Household occupying an Affordable Rental Unit pursuant to a Tenancy Agreement, and that has a Gross Annual Income equal to or lesser than the Maximum Allowable Income.

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;
- (b) performance of this Agreement by the Owner is a condition, as contemplated by s. 904 of the *Local Government Act*, of the Owner becoming entitled to certain density bonuses respecting development of the Land, which density bonuses the Owner acknowledges are 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

2.0 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 a maximum of 6 residential units at a density of 0.55(floor area ratio) on the Land.
- (c) The number of Affordable Rental Units constructed by the Owner shall be 1, being 17 percent of the total number of residential units in the development;
- (d) The number of Special Needs Dwelling Units constructed by the owner on the Land shall be 0, being 0% of the total number of residential units on the Land; and
- (e) The Owner acknowledges that the registration of this Affordable Housing Agreement will allow the City to grant a density bonus of 0.05.

**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 building containing an Affordable Rental Unit other than a full interest in the fee simple title to an agency or individual that will continue to ensure that the identified affordable rental dwelling unit(s) are available in accordance with this Agreement.

**ARTICLE 4
AFFORDABLE RENTAL UNITS**

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

- (a) the Owner must rent or lease an Affordable Rental Unit on the Land only to a Tenant whose Household has a Gross Annual Income equal to or lesser than the Maximum Allowable Income, on a month-to-month basis or by a lease agreement not to exceed three years, including any rights of renewal;
- (b) the rent payable for an Affordable Rental Unit must be calculated as set out in Schedule "B" to this Agreement;
- (c) the Owner agrees that since the determination of Affordable Rental includes consideration, fees or charges for use of limited common property, 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 a Affordable Rental Unit under this section for use of limited common property, sanitary sewer, storm sewer, or water utilities for or in respect of the Dwelling Unit or any fees or charges for gas or electrical utilities provided to the Dwelling Unit;
- (d) the Owner must specify in every Tenancy Agreement the existence of this Agreement and the occupancy restrictions applicable to the Affordable Rental Unit, and attach a copy of this Agreement to every Tenancy Agreement;
- (e) the Owner will deliver a copy of the Tenancy Agreement for each Affordable Rental Unit to the City upon demand; and
- (f) the Owner will terminate any Tenancy Agreement where the Tenant users 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).

4.1 Prospective Tenants – The Owner will be solely responsible for screening prospective Tenants to determine whether or not they qualify for Affordable Rental and whether or not their households have Gross Annual Incomes equal to or lesser than the Maximum Allowable Income, in accordance with this 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 Tenant.

4.2 Use and Occupancy for Special Needs Dwelling Unit - The Owner agrees with the City as follows:

- (a) the Owner must rent or lease a Special Needs Dwelling Unit on the Land only to a Special Needs Individual whose Household has a Gross Annual Income equal to or lesser than the Maximum Allowable Income, on a month-to-month basis or by a lease agreement not to exceed three years, including any rights of renewal;
- (b) the rent payable for a Special Needs Dwelling Unit must be calculated as set out in Schedule "B" to this Agreement;
- (c) the Owner agrees that since the determination of Affordable Rental includes consideration, fees or charges for use of limited common property, 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 a Special Needs Dwelling Unit under this section for use of limited common property, sanitary sewer, storm sewer, or water utilities for or in respect of the Dwelling Unit or any fees or charges for gas or electrical utilities provided to the Dwelling Unit;
- (d) the Owner must specify in every Tenancy Agreement the existence of this Agreement and the occupancy restrictions applicable to the Special Needs Dwelling Unit, and attach a copy of this Agreement to every Tenancy Agreement;
- (e) the Owner will deliver a copy of the Tenancy Agreement for each Special Needs Dwelling Unit to the City upon demand; and
- (f) the Owner will terminate any Tenancy Agreement where the Tenant users 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).

4.3 Damages and Rent Charge - The Owner agrees with the City as follows:

- (a) **Rental Restriction** - the Gross Annual Income of all individuals who occupy the Affordable Rental Unit or the Special Needs Dwelling Unit must not exceed the amount set out in Schedule "B" to this Agreement;
- (b) **Damages for Breach** - for each day an Affordable Rental Unit or Special Needs Dwelling Unit is occupied in breach of this Agreement, the Owner must pay the City \$100.00 for each day on which the breach has occurred, as liquidated damages and not as a penalty, due and payable at the offices of the City on the last day of the calendar month in which the breach occurred, but the City agrees that this section applies only if the City has given 60 days' written notice to the Owner of occupancy of the Affordable Rental Unit or Special Needs Dwelling Unit in breach of this Agreement and the Owner has not cured that breach before expiry of that 60 days;
- (c) **Statutory Declaration** - When making an application for a business license or a renewal of a business license pursuant to the City's Business License Bylaw No. 7878, or its successor, 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. Additionally, the

City may request the Owner deliver to the City such a statutory declaration no more than four times in any year. The Owner must submit such a statutory declaration a minimum of once a year; and

- (d) **Tenant Income Tax Information** - By June 1st of each year an Affordable Rental Unit or Special Needs Dwelling Unit is occupied, the Owner will send the Community Planning Manager of the City the most recent income tax return information for the Household that occupies that unit. Should a Tenant object to giving his or her Household's income tax return information to the Owner, the Tenant may send it directly to the Community Planning Manager of the City.

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. 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.

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 Dwelling Units and will permit representatives of the City to inspect the Affordable Rental Units and Special Needs 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 Affordable Rental Units and Special Needs 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 Affordable Rental Units and Special Needs Dwelling Units.

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 owner of the Land.
- 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 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 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 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)

Address)

Occupation)

OWNER
by its authorized signatories:

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
[AFFORDABLE RENTAL UNITS]

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 [INSERT LEGAL]
)	
)	
)	
)	

I, _____, of _____, do solemnly declare:

1. This declaration is made with respect to the Dwelling Unit ("Unit") legally or otherwise described as follows:

[INSERT LEGAL DESCRIPTION AND CIVIC ADDRESS].

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 average affordable rent for Kelowna from the most recent annual Canada Mortgage and Housing Corporation (CMHC) Rental Market Report for an apartment of the Unit's size is \$_____ per month, including the cost of heat, water, and electricity;

5. The rent charged each month for the Unit is as follows:

(a) the monthly rent on the date 365 days before the date of this statutory declaration was \$_____ per month;

(b) the monthly rent on the date of this statutory declaration is: \$_____; and

(c) the proposed or actual monthly rent that will be payable on the date that is 90 days after the date of this statutory declaration is \$_____.

6. For the period from _____, _____ to _____, _____ the Unit was occupied by the following persons, whose names and addresses appear below, and in accordance with the Housing Agreement:

[INSERT NAMES AND AGES OF ALL OCCUPANTS WITH ADDRESS OF UNIT].

7. The gross annual income of all individuals aged 15 and over who reside in the Unit is equal to or less than the maximum allowable income \$_____, being the average affordable rent set out in Clause 4 above multiplied by 40.
8. 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 _____)
 _____, _____)

) **Signature of person making declaration**
)

 A Commissioner for taking affidavits for
 British Columbia)

SCHEDULE B
[AFFORDABLE RENTAL CALCULATIONS]

The "Affordable Rental" rate is based on the premise that households that spend 30% of their income on basic shelter costs to afford rents equivalent to the average rents published annually by Canada Mortgage and Housing Corporation (CMHC) for Kelowna are facing a housing shortage. This is the direction behind the City of Kelowna Official Community Plan, Bylaw 7600 (policy 8.1.16). This Housing Agreement is a method of creating affordable housing for such households.

The City of Kelowna will publish the Average Monthly Rents for different sizes of Affordable Rental Dwelling Units periodically, which will be the average rents for Kelowna from the annual CMHC Rental Market Report.

The Owner may not permit a Household whose Gross Annual Income is greater than the Maximum Annual Income, as calculated according to the formula below, to occupy an Affordable Rental Dwelling Unit. Gross Annual Income is aggregated taxable income (line 260 of income tax T1 General Form) of all residents 15 years and older residing in the Dwelling Unit. The Maximum Allowable Income is calculated based on the Dwelling Unit size by number of bedrooms that the Household rents. Rent, for affordability purposes, must include heat, electricity and water.

The formula to calculate the Maximum Annual Income permitted for a Household to occupy an Affordable Rental Dwelling Unit is as follows:

$$\text{Maximum Annual Income} = \text{Average Monthly Rent (CMHC)} \times 40$$

This is an abbreviated version of:

$$(\text{Maximum Annual Income} \times 30\%) = (\text{Average Monthly Rent} \times 12 \text{ months})$$

SAMPLE:

Average Monthly Rents of All Private Apartments in the City of Kelowna, 2008
(Canada Mortgage and Housing Corporation Market Rental Survey- City of Kelowna)

	Bachelor	One Bedroom	Two Bedroom	Three Bedroom +
Average Monthly Rent	\$624	\$800	\$961	\$1,069

The Maximum Annual Income Calculations for 2008:

1 Bedroom Unit

$$\text{Maximum Annual Income} = \$800 \times 40 = \$24,960$$

2 Bedroom Unit

$$\text{Maximum annual income} = \$961 \times 40 = \$32,000$$

3 Bedroom Unit

$$\text{Maximum annual income} = \$1,069 \times 40 = \$38,440$$



North West looking South East



CITY OF KELOWNA
MEMORANDUM

FILE COPY

Date: June 12, 2012
File No.: Z12-0048
To: Land Use Management Department (BD)
From: Development Engineering Manager
Subject: 2463, 2473 Pandosy St Lots 20 Plan 1141 Lot A EPP 17675 RM3

Development Engineering has the following requirements associated with this application.

1. Domestic Water and Fire Protection

The subject properties are currently serviced with 19mm-diameter copper water services. Only one service be permitted for the proposed development. The applicant, at his cost, will arrange for the disconnection of existing services at the main and the installation of one new larger metered water service. The estimated cost of the service upgrade, for bonding purposes is **\$17,000.00**

2. Sanitary Sewer

Our records indicate that the subject properties are serviced with 100mm-diameter sanitary services. One of the services may be utilized for the proposed application. The applicant, at his cost, will arrange for the removing and capping of one of the existing services at the main as well the installation of an inspection chamber complete with brooks box at the property line. The estimated cost for bonding purposes is **\$7,000.00**

3. Road Improvements

Pandosy Street must be upgraded to a full urban standard along the frontage of this property, including the construction of a 2.0m wide concrete sidewalk, re-location or adjustment of existing utility appurtenances if required to accommodate the construction. The estimated cost for bonding purposes is **\$8,000.00**

Francis Avenue must be upgraded to an urban standard along the full frontage of this development including the construction of the curb and gutter, fillet pavement, boulevard landscaping including trees and an underground irrigation system and a driveway letdown. The estimated cost for bonding purposes is **\$6,000.00**

4. Road Dedication and Subdivision Requirements

By registered plan to provide the following:

- (i) Dedicate a 2.0 meter road widening on the Pandosy St frontage of Lot 20 Plan 1141 complete with a 6.0 meter radius corner rounding.
- (ii) Grant statutory rights-of-way if required for utility services.
- (iii) Lot consolidation.

5. Electric Power and Telecommunication Services

It is the applicant's responsibility to make a servicing application with the respective electric power, telephone and cable transmission companies to arrange for service upgrades to these services which would be at the applicant's cost.

6. Access, Manoeuvrability and Parking Requirements

The required parking modules must meet bylaw requirements.
Vehicular access will be limited to Francis Avenue and the abutting lane.

7. Engineering

Road and utility construction design, construction supervision, and quality control supervision of all off-site and site services including on-site drainage collection and disposal systems and lot grading, must be performed by an approved consulting civil engineer. Designs must be submitted to the City Engineering Department for review and marked "issued for construction" by the City Engineer before construction may begin.

8. Bonding and Levy Summary(a) Bonding

Service Upgrades	\$24,000.00
Pandosy frontage improvements	\$ 8,000.00
Francis Ave frontage improvements	\$ 6,000.00
Total Bonding	\$38,000.00

NOTE: The bonding amounts shown above are comprised of estimated construction costs escalated to include engineering design and contingency protection. The owner should engage a consulting civil engineer to provide detailed designs and obtain actual tendered construction costs if he wishes to do so. Bonding for required off-site construction must be provided as a condition of this application, and may be in the form of cash or an irrevocable letter of credit, in an approved format. **The owner must also enter into a servicing agreement in a form provided by the City prior to 4th reading of the zone amending bylaw.**

9. Administration Charge

An administration charge will be assessed for processing of this application, review and approval of engineering designs and construction inspection. The administration charge is calculated as (3% of Total Off-Site Construction Cost plus HST) in the amount of **\$ 911.96 (\$814.25 + 97.71 HST)**



Steve Muenz, P. Eng.
Development Engineering Manager
JF/jf