

REPORT TO COUNCIL



Date: June 25, 2012

To: City Manager

From: Land Use Management, Community Sustainability (BD)

Application: Z12-0032

Owner: KNL Properties Ltd.
Inc. No. 850280

Address: 260 Davie Road

Applicant: Davara Holdings Ltd.
(Dave Sargent)

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. Z12-0032 to amend the City of Kelowna Zoning Bylaw No. 8000 by changing the zoning classification of Lot 4, Section 22, Township 26, ODYD Plan 18085 located on Davie Road, 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. 10729 authorizing a Housing Agreement between the City of Kelowna and KNL Properties Ltd. Inc. No. 850280, which requires the owners to designate 7 dwelling units for purpose-built rental for a period of ten years on Lot 4, Section 22, Township 26, ODYD Plan 18085 located on Davie Road, 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 FURTHER THAT final adoption of the zone amending bylaw be considered subsequent to the requirements of Development Engineering Branch, and Rutland Waterworks being completed to their satisfaction.

2.0 Purpose

The applicant is proposing to rezone the subject property from the RU1- Large Lot Housing zone to the RM3 - Low Density Multiple Housing zone to construct a 7 unit multi-family building. A

Housing Agreement is proposed to secure the purpose-built rental units for a minimum period of ten years.

3.0 Land Use Management

A seven unit infill rental townhome project is proposed for the subject property. The subject property is designated as Multiple Unit Residential - low density (MRL) in the OCP and the proposed rezoning to the RM3 - Low Density Multiple housing is in compliance. Other properties currently zoned RM3 are in close proximity. The applicant is seeking to enter into a Housing Agreement to secure 7 purpose built rental units for a period of 10 years to maximize the density potential for the parcel.

This proposal is the first multifamily project in this section of Davie Road. The proposed townhome development takes advantage of the long narrow lot and presents an end elevation to the street which has a similar massing to the established neighbourhood. The exterior form with its modern influence is quite dissimilar to the existing typical 1950-60's housing stock, however the contrast integrates new building form and character that promotes livability and scale that will be a positive addition to the neighborhood as it transitions.

Considering the proposed townhouses in isolation, the choice of materials and design elements are a refreshing change from the more typical multifamily developments found in the area. The parking is located at the rear of the site to improve livability of the units and to de-emphasize automobile dominance for the site. All units have private entrances and are located at grade with private open space provided in the rear in the form of a patio.

A number of variances are being requested to facilitate this development. They include:

- to increase the maximum site coverage permitted for buildings and parking;
- to reduce the front yard and north side yard setbacks, and consequently a smaller landscape buffer in the front yard; and
- to relax the number of parking spaces provided.

In summary, this is the first application that transitions this neighborhood from single family to multiple family, low density housing forms. The proposal will create additional residences, thereby increasing density in an area adjacent to parks, walking paths, public transit and other services, which contributes to a healthy built environment.

4.0 Proposal

4.1 Project Description

The proposed two storey building contains seven two-bedroom townhouse units that range in size from 131m² (for the end units) to 105m² (for the centre units). The building is oriented along the length of the property facing the driveway the runs long the south side of the site to the surface parking at the rear. It is anticipated by the developer that this driveway could function for a possible second phase of the project on the neighbouring site to the south should it become available. With this configuration it is expected that the drive aisle will encourage pedestrian and family recreational activity and a sense of community will be fostered. The driveway and common open space are anticipated to have multiple functions including on-site play area for children.

The building presents an end to the street front which has modest architectural detailing, however, pedestrian connectivity to the existing neighbourhood is limited. At two storeys in height, the building will be taller than many of the surrounding single family homes but respects the allowable height profile of both a single family house or a typical townhome development.

To configure the parking at the rear of the site, a long drive aisle is required which shifts the building closer to the front and side lot lines. Achieving the hidden parking area triggers a number of variances which have merit to achieve the overall goals of the infill project.

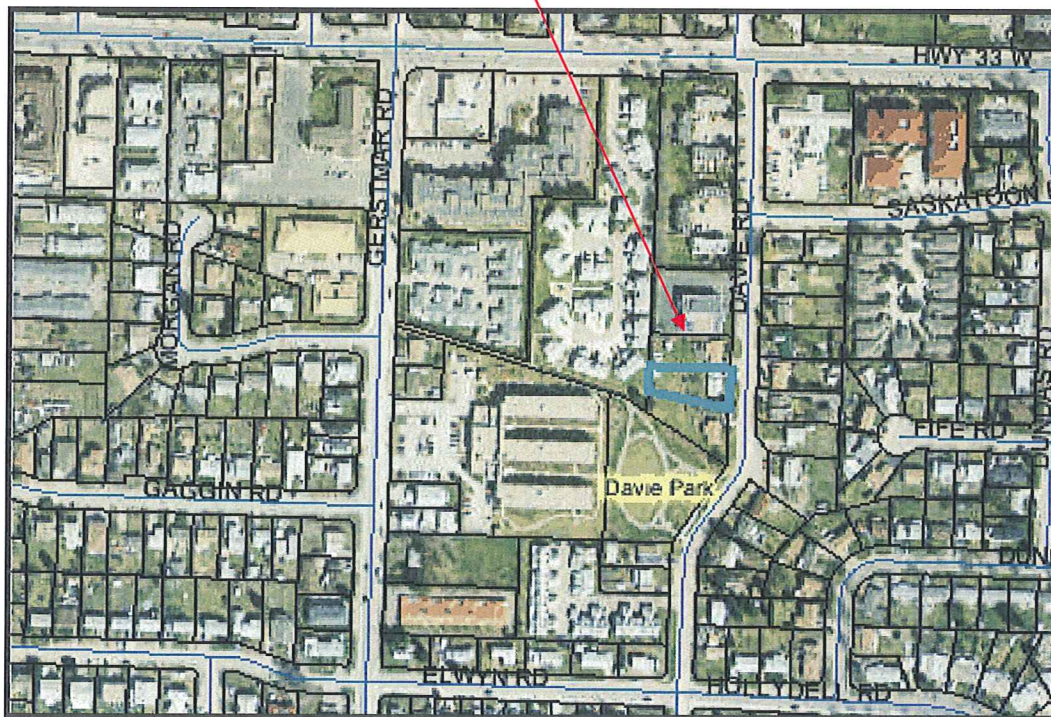
4.2 Site Context

The subject property is located on the west side of Davie Road south of Highway 33 in the Rutland sector of Kelowna in close proximity to other properties currently zoned RM3. Other RM3 zoned sites are found on the street, however the immediate properties consist of 1.5 storey single family residences. It is located across from the boundary of the Rutland Urban Centre with Davie Park to the south.

The surrounding properties are zoned as follows:

Orientation	Zoning	Land Use
North	RU1- Large Lot Housing	Single Family Dwelling
East	RU1- Large Lot Housing RU1s - Large Lot Housing with Secondary Suite	Single Family Dwelling Single Family Dwelling with Suite
South	RU1- Large Lot Housing	Single Family Dwelling
West	RM3 - Low Density Multiple Housing	Multi- family housing complex

4.3 Subject Property Map : 260 Davie Road



4.4 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	1391 m ²	900 m ²
Lot Width	28.7 m	30.0 m
Lot Depth	59.4 - 60.3 m	30.0 m
Development Regulations		
Site Coverage (buildings)	27 %	40%
Site Coverage (buildings/parking)	77 % ①	50%
Height	2 storeys/ 7.4 m	2 ½ storeys / 9.5 m
Front Yard	2.0 m ②	4.5 m or 6.0 m for a garage
Side Yard (n)	3.5 m ③	4.0 m (1 - 1 ½ storey) 4.5 m (2 - 2 ½ storey)
Side Yard (s)	8.0 m	4.0 m (1 - 1 ½ storey) 4.5 m (2 - 2 ½ storey)
Rear yard	20.4 m	7.5m
Other Requirements		
Floor Area Ratio	0.55	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 (#)	7 two bedroom units proposed 1.5 X 7 = 10.5 stalls + 1 visitor stall Total stalls required: 12 Total stalls proposed: 10 ④	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
Parking setbacks	Complies	2.0 m from front lot line; 1.5 m from side and rear lot lines

Other Requirements		
Drive Isle	6 m wide driveway to parking area 7.0m wide driveway in parking area	Aisles shall be 7.0 m wide for all two way
Bicycle parking	Total required and provided 5 bicycle spaces	Class I: 0.5 per dwelling unit Class II: 0.1 per dwelling unit
Private Open Space	175m ²	25m ² per 2 or more bedroom dwellings
Landscape requirements	2.0 m landscape buffer proposed. ⑤	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 maximum site coverage permitted for buildings and parking from 50% to 77%.

② A variance is sought to reduce the front yard from 4.5m required to 2.0m proposed.

③ A variance is being sought to reduce the required side yard from 4.5m required to 3.5m proposed.

④ A variance is requested to reduce the parking from 12 spaces required to 10 spaces provided.

⑤ A variance is required to reduce the front yard landscape requirement from 3.0m to 2.0m.

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.

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.

¹ Official community plan Objective 5.2 Community Sustainability

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

5.0 Technical Comments

5.1 Building & Permitting Department

Development Cost Charges (DCC's) are required to be paid prior to issuance of any Building Permits.

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

5.2 Development Engineering Department

See Attached.

5.3 Fire Department

Fire department access, fire flows, and hydrants as per the BC Building Code and City of Kelowna Subdivision Bylaw #7900. The Subdivision Bylaw requires a minimum of 150ltr/sec flow. The access road is to be a minimum of 6M in width with no parking signs provided along the roadway.

5.4 Rutland Water works

Fire flows, connection details, Capital Expenditure Charges, water system upgrades must be determined by Mould Engineering to determine the costs.

5.5 Fortis BC Gas

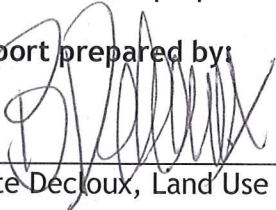
FortisBC facilities will not be adversely affected once existing gas service is abandoned and/or altered prior to demolition of the current home.

6.0 Application Chronology

Date of Application Received: April 20, 2012

Refinement of proposal submissions: May 18, 2012

Report prepared by:



Birte Decloux, Land Use Planner

Reviewed by:



Danielle Noble Manager, Urban Land Use

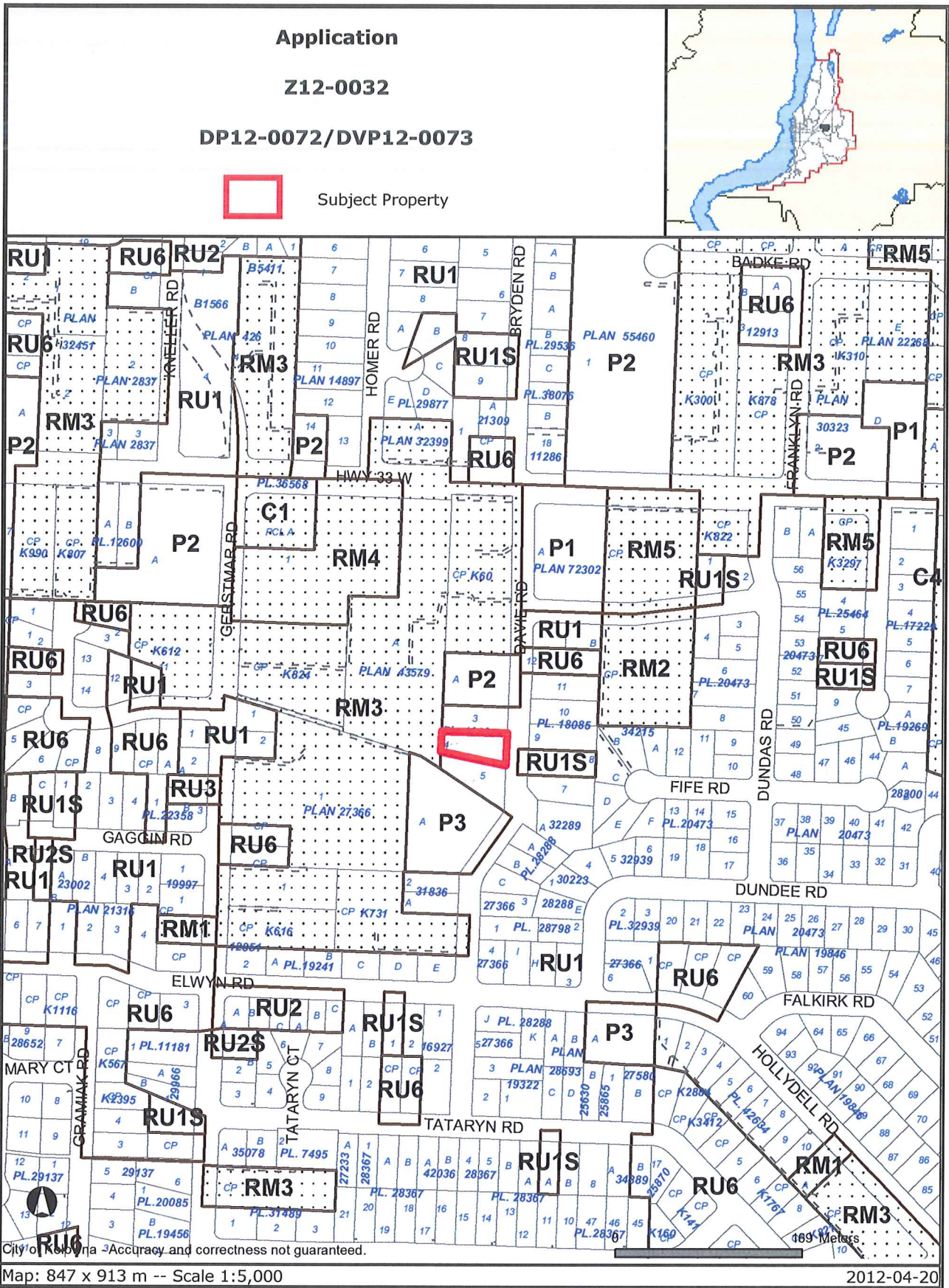
Approved for Inclusion:



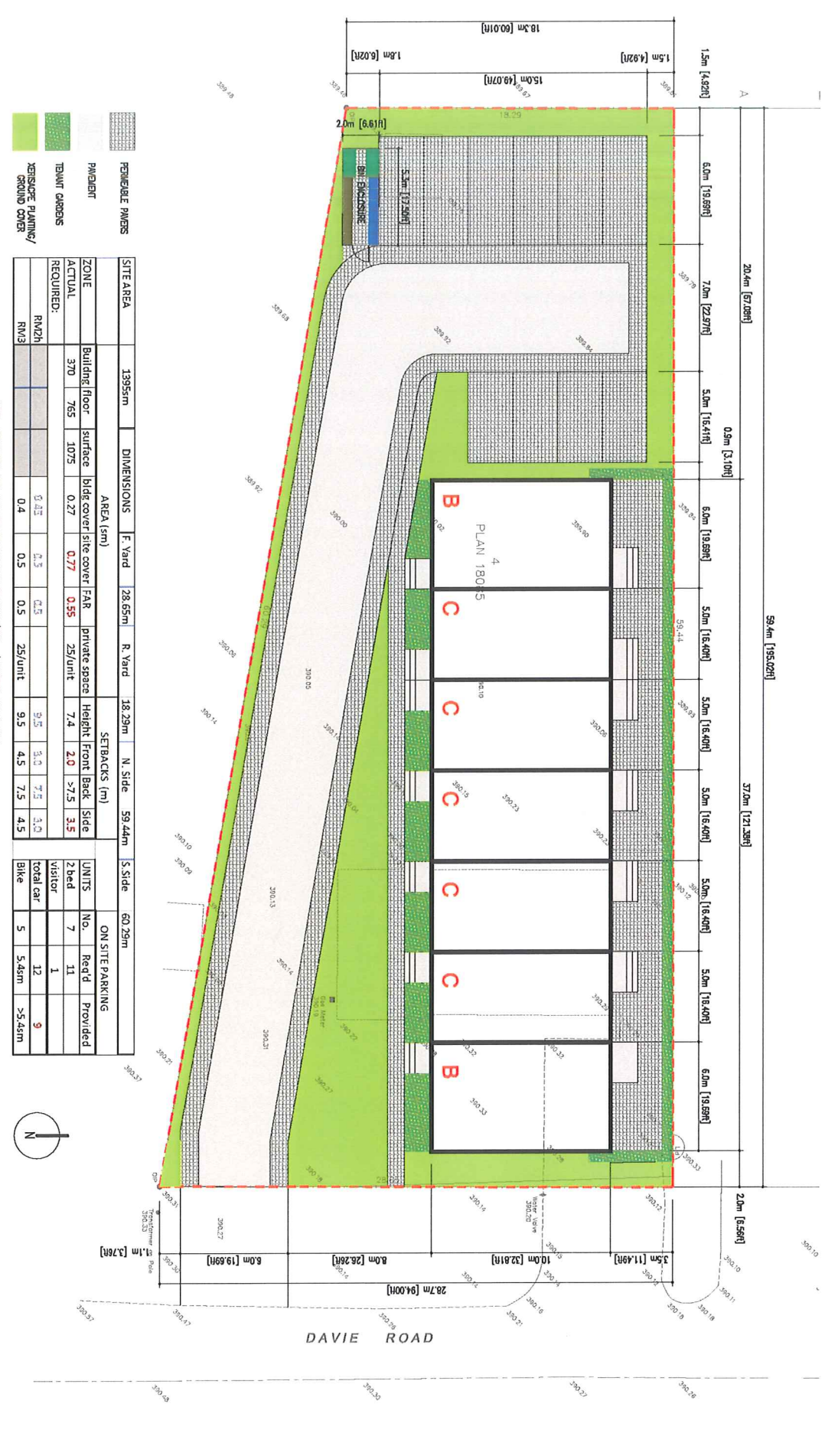
Shelley Gambacort, Director, Land Use Management

Attachments:

Site Plan
Conceptual Elevations
Colour rendering
Context/Site Photos
Sustainability Checklist
Summary of Technical Comments

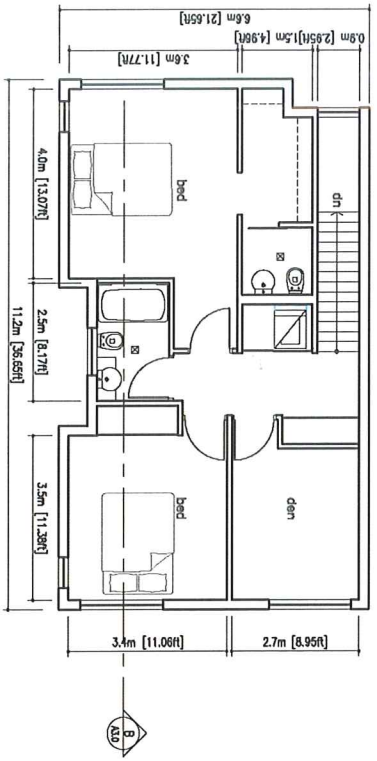


Certain layers such as lots, zoning and dp areas are updated bi-weekly. This map is for general information only.
 The City of Kelowna does not guarantee its accuracy. All information should be verified.

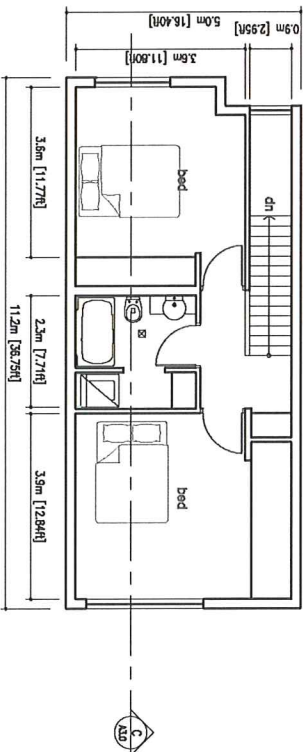


SITE AREA	DIMENSIONS		AREA (sqm)		SETBACKS (m)			ON SITE PARKING			
	F. Yard	R. Yard	F. Yard	R. Yard	N. Side	S. Side	Units No.	Red'd	Provided		
1395sqm	28.65m	18.29m	28.65m	18.29m	59.44m	60.29m	7	11	11		
Building floor	surface	bidg cover	site cover	FAR	private space	Height	Front	Back	Side		
ACTUAL	370	765	1075	0.27	0.77	0.55	25/unit	7.4	2.0	>7.5	3.5
REQUIRED:											
RM2h				0.45	0.5	0.5	25/unit	9.5	3.0	7.5	3.0
RM13				0.4	0.5	0.5	25/unit	9.5	4.5	7.5	4.5

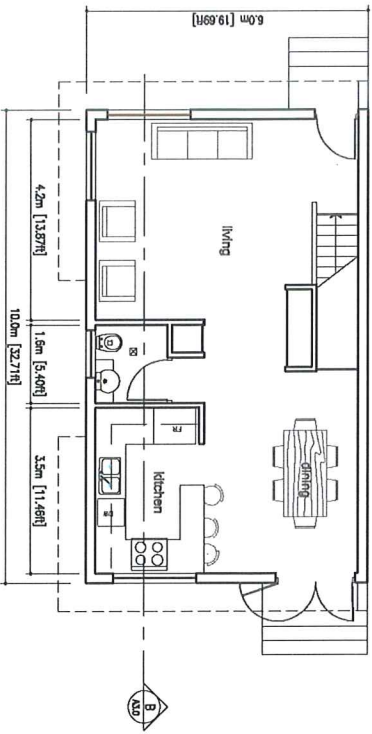
NOTE: PROPOSED AREA OF SURFACE THAT IS IMPERVIOUS (982 sqm) COVERS 49% OF SITE



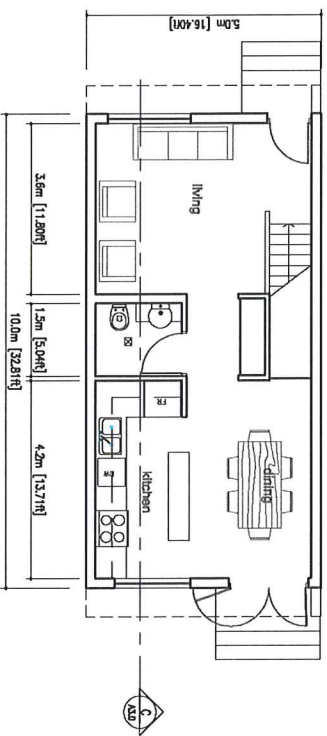
B UNIT UPPER FLOOR PLAN- 765 SF



C UNIT UPPER FLOOR PLAN- 590 SF



B UNIT MAIN FLOOR PLAN- 645 SF



C UNIT MAIN FLOOR PLAN- 540 SF

PROPOSED FLOOR PLANS

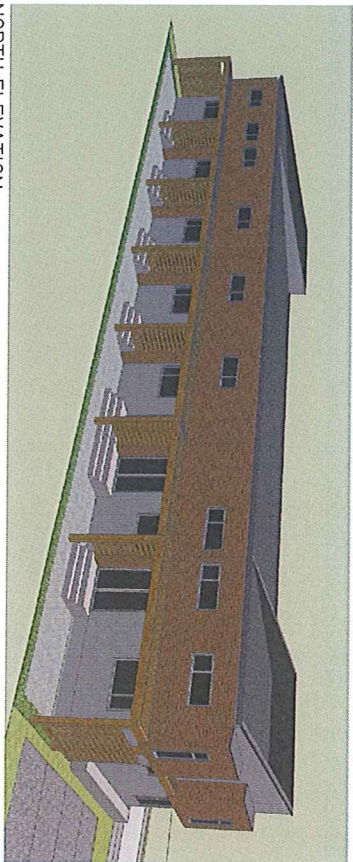
DAVIE TOWNHOMES - 260 DAVIE RD. KELOWNA
 SITE PLAN OF LOT 4, SECTION 22, TOWNSHIP 26, O.D.Y.D., PLAN 18085

03.27.12
 1:100

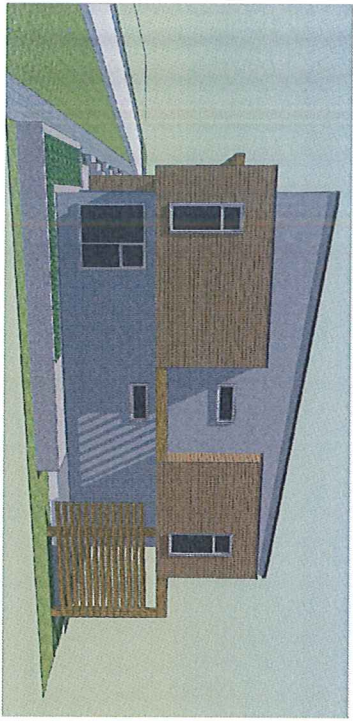
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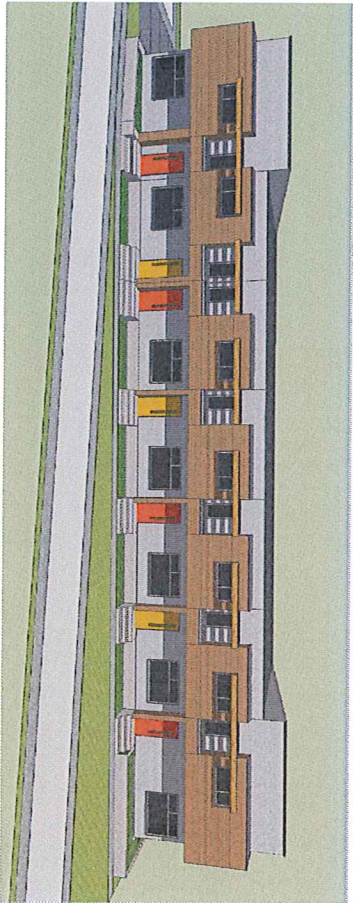
PERSPECTIVE



NORTH ELEVATION



EAST ELEVATION (DAVIE ST.)



SOUTH ELEVATION

- PROPOSED MATERIALS**
- MAIN VOLUME - Acrylic Stucco
 - PROJECTING VOLUME - Prefinished 'hardie' siding
 - TRELLIS/ SHADE ELEMENTS - Rough sawn fir, stained
 - WINDOWS - Vinyl
 - DOORS - Metal, painted
 - ROOF - Membrane type TBD



Land Use Management
 1435 Water Street
 Kelowna, BC V1Y 1J4
 250 469-8626
 kelowna.ca/landuse
 sustainability@kelowna.ca

Sustainability Checklist

Commercial or Multi-unit Development
 with Rezoning

Project Name or Location 260 Devis Rd

Applicant Name David Sargent (Devara Holdings Ltd)

Organization _____

ECONOMIC SUSTAINABILITY

	Score	Points
Building uses: (IF APPLICABLE, SELECT ONE FROM LIST)		
<input type="checkbox"/> 3 or more uses (ie. Office space, retail & residential)		3
<input type="checkbox"/> 2 uses or types of residential (ie. retail & residential or townhouse & low-rise apartments)		2
Employs local contractors (some, most or all) during construction	<u>5</u>	2-5
Construction products and supplies sourced within the region	<u>2</u>	1-2
TOTAL	<u>7</u>	10

ENVIRONMENTAL SUSTAINABILITY

	Score	Points
Green Building Certification being sought		
<input type="checkbox"/> LEED		5
<input type="checkbox"/> BuiltGreen, Green Globe or other (please specify) _____		3
Recycled Materials used in Building Construction	<u>0</u>	2

Green Space

Design includes Shared Green Space (ie. Rooftop garden, community garden)	<u>2</u>	2-3
Environmentally-Sensitive Areas Protected during construction phase (ie. Fenced)		2
or	<u>2</u>	
No Environmentally Sensitive Area to protect		

Air Quality

Co-op Car(s) or Transit Passes for Building Occupants (secured through an agreement)	<u>5</u>	2
Natural Ventilation (ie. Windows that open)	<u>2</u>	2
Safe & Accessible Bicycle Storage Facilities		2
Trees planted on the site beyond zoning requirements (not including any replacement trees)		
<input checked="" type="checkbox"/> 1-5 trees	<u>1</u>	1
<input type="checkbox"/> 5 +		2
No Fast Food Drive Thru facilities	<u>1</u>	1

Water Quality & Quantity

Recycling of grey water		4
50% of area outside of permitted site coverage is permeable or unpaved surface	<u>2</u>	2
Irrigation system employs conservation technology (ie. Drip irrigation)		
or		2
No irrigation system required for landscaping		
Rainwater collection		
or		2
Water conservation beyond building code requirements		
Xeriscaping for water conservation		

or Landscaping with indigenous vegetation (drought resistant)	2	2
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Energy Conservation

Renewable Energy Source(s) for Building, such as geo-thermal, solar photovoltaic, air pumps, etc. Please Specify: _____		2-4
Building Orientated and/or Designed to Maximize Energy Savings	2	2
Low Energy Windows Installed throughout Building(s)	2	2
Pre-Heating Water Energy Technology to be Employed		2
Energy Efficient Features (lighting, appliances, etc.)	2	2
SUBTOTAL	18	45

SOCIAL SUSTAINABILITY

	Score	Points
Provides Indoor or Outdoor Social/Recreational Amenity (i.e. community meeting place, dog park, public community garden, etc.). Please Specify: <u>located adjacent to park</u>	2	2-3
Designed According to Crime Preventions Through Environmental Design (CPTED) Principles (staff can provide document)	2	2
SUBTOTAL	4	5

CULTURAL SUSTAINABILITY

	Score	Points
Voluntary Streetscaping Improvements, such as benches, planters, or lighting upgrades		2-4
City Design Guidelines & Staff Comments Addressed in Project Design	3	1-3
Heritage Site Identified and Recommendations for Conservation Followed or No Disturbance to a Heritage Site/No Heritage Site	3	1-3 3
Public Art Provision or Significant Public Amenity (i.e. covered walkway, fountain, etc.) Please Specify: _____		1-3
Connectivity from site to Parks, Bike Paths, Pedestrian Walkways, or Local Amenities (shops, medical centre, etc.)	2	2
SUBTOTAL	8	15

BONUS

	Score	Points
Other Sustainability Measure(s), including but not limited to: ▶ Rehabilitation of a Natural Feature (i.e. wetland); Green Roof; Accessible Design Beyond Building Code; Child-Friendly Design. Please provide details below		1-10
ECONOMIC SUBTOTAL	7	10
ENVIRONMENTAL SUBTOTAL	18	45
SOCIAL SUBTOTAL	4	5
CULTURAL SUBTOTAL	8	15
TOTAL	47	85

ADDITIONAL DETAILS

CITY OF KELOWNA

MEMORANDUM

Date: June 12, 2012
File No.: Z12-0032
To: Planning & Development Services Department (BD)
From: Development Engineer Manager (SM)
Subject: 260 Davie Road – LOT4, PLAN 18085, Sec. 22, twp. 26. ODYD

The Development Engineering comments and requirements regarding this application to rezone from RU-1 to RM3 are as follows:

1. Subdivision

a) Provide easements as may be required.

2. Geotechnical Study.

A comprehensive Geotechnical Study prepared by a Professional Engineer competent in the field of geotechnical engineering is required; the study is to address the following:

- Overall site suitability for development.
- Presence of ground water and/or springs.
- Presence of fill areas.
- Presence of swelling clays.
- Presence of sulphates.
- Potential site erosion.
- Provide specific requirements for footings and foundation construction.
- Provide specific construction design sections for roads and utilities over and above the City's current construction standards

3. Domestic water and fire protection.

- a) This development is within the service area of the Rutland Waterworks District (RWD). The developer is required to make satisfactory arrangements with the RWD for these items. All charges for service connection and upgrading costs are to be paid directly to the RWD. The developer is required to provide a confirmation that the district is capable of supplying fire flow in accordance with current Bylaws and policies requirements.
- b) A watermeter is mandatory as well as a sewer credit meter to measure all the irrigation water. Watermeters must be housed in an above-ground, heated, accessible and secure building, either as part of the main site buildings or in a separate building. Remote readers units are also mandatory on all meters.

- e) Before any construction related to the requirements of this zoning application commences, design drawings prepared by a professional engineer must be submitted to the City's Works & Utilities Department. The design drawings must first be "Issued for Construction" by the City Engineer. On examination of design drawings, it may be determined that rights-of-way are required for current or future needs.

10. Servicing Agreements for Works and Services

- a) A Servicing Agreement is required for all works and services on City lands in accordance with the Subdivision, Development & Servicing Bylaw No. 7900. The applicant's Engineer, prior to preparation of Servicing Agreements, must provide adequate drawings and estimates for the required works. The Servicing Agreement must be in the form as described in Schedule 2 of the bylaw.
- b) Part 3, "Security for Works and Services", of the Bylaw, describes the Bonding and Insurance requirements of the Owner. The liability limit is not to be less than \$5,000,000 and the City is to be named on the insurance policy as an additional insured.

11. DCC Credits.

None of the required improvements qualify for DCC credit consideration, as these upgrades are not identified in the current DCC schedules.

12. Bonding and Levies Summary.

a) Performance Bonding

Davie Road frontage upgrade	<u>\$20,200.00</u>
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Note that the applicant is not required to do the upgrades. The construction can be deferred and the City will initiate the work later at its own construction schedule, the cost would be reduced to **\$17,500.00**.

Steve Muenz, P.Eng.
Development Engineering Manager

BB

PURPOSE-BUILT RENTAL HOUSING AGREEMENT

THIS AGREEMENT dated for reference July __, 2012 affects:

LEGAL DESCRIPTION OF PROPERTY SUBJECT TO THE AGREEMENT:

Lot 4, Section 22, Township 26, ODYD Plan 18085
(located on Davie Road, Kelowna, BC)

("Land")

And is

BETWEEN:

KNL Properties Ltd. Inc. No. 850280
(needs address)
("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 -

"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 a self-contained building(s) containing three or more Dwelling Units that are intended to be used for rental housing and does not include buildings that are stratified; and

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

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 building or buildings providing 7 Dwelling Units as purpose-built rental housing;
- (c) The Owner acknowledges that the City will not support applications to stratify the building and allow the identified purpose-built rental dwellings to be sold independently of each other for a period of ten (10) years from the date of this agreement.

Where is the rental rate formula?

**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 purpose built rental Dwelling Unit(s) 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 purpose- built rental Dwelling Unit(s) are available in accordance with this Agreement.

**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 Dwelling Units and will permit representatives of the City to inspect the 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 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 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:)

KNL Properties Ltd.
Inc. No. 850280
by its authorized signatories:

Signature of Witness)

Print Name)

Print Name:

Address)

Occupation)

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

DRAFT