

# CITY OF KELOWNA

## BYLAW NO. 9057

### Heritage Revitalization Agreement Authorization Bylaw 2094 Abbott Street

WHEREAS a local government may, by bylaw, enter into a heritage revitalization agreement with the Owner of property which Council deems to be of heritage value pursuant to section 966 of the *Local Government Act*;

AND WHEREAS the Municipal Council of the City of Kelowna is desirous of entering into a Heritage Revitalization Agreement with Cheryl and David Cross-Negrin for the property located at 2094 Abbott Street, Kelowna, B.C.;

THEREFORE the Municipal Council of the City of Kelowna, in open meeting assembled, enacts as follows:

1. The Municipal Council of the City of Kelowna hereby authorizes the City of Kelowna to enter into a Heritage Revitalization Agreement with Cheryl and David Cross-Negrin for the property located at 2094 Abbott Street, Kelowna, B.C., and legally described as:

Lot A, District Lot 14, ODYD, Plan KAP47142

In the form of such Agreement attached to and forming part of this bylaw as Schedule "A".

2. The Mayor and City Clerk are hereby authorized to execute the attached agreement, as well as any conveyances, deeds, receipts and other documents in connection with the attached agreement, and to affix the corporate seal of the City of Kelowna to same.

Read a first time by the Municipal Council this

Considered at a Public Hearing on the

Read a second and third time by the Municipal Council this

Approved under The Highways Act this

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(Approving Officer - Ministry of Transportation)

Adopted by the Municipal Council of the City of Kelowna this

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Mayor

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City Clerk

**SCHEDULE "A"**  
**HERITAGE REVITALIZATION AGREEMENT**

| DOCUMENT APPROVAL       |               |      |       |
|-------------------------|---------------|------|-------|
| Document No. HRA03-0001 |               |      |       |
| Cir                     | Department    | Date | Init. |
| AB                      | Planning      |      |       |
| SM                      | Wrks. & Util. |      |       |
| JW                      | Insp. Serv.   |      |       |
| AF                      | City Clerks   |      |       |

THIS AGREEMENT dated as of the        day of        , 2003.

BETWEEN:

CITY OF KELOWNA, a Municipal Corporation having offices at:  
1435 Water Street, Kelowna, British Columbia V1Y 1J4

(the "CITY")

AND:

Cheryl Crosse-Negrin and David Negrin  
1921 27<sup>th</sup> Street  
West Vancouver, B.C.  
V7V 4L1

(the "OWNER")

WHEREAS a local government may, by bylaw, enter into a Heritage Revitalization Agreement with the Owner of property identified as having heritage value, pursuant to Section 966 of the *Local Government Act*,

AND WHEREAS the Owner owns certain real property on which is situated a building of heritage value, pursuant to the Heritage Register, which property and building are located at 2094 Abbott Street, Kelowna, British Columbia and legally described as:

Lot A, District Lot 14, ODYD, Plan KAP47142

(herein called the "Heritage Lands")

AND WHEREAS the Owner has presented to the City a proposal for the use, development and preservation of the Heritage Lands and has voluntarily and without any requirement by the City, entered into this agreement pursuant to Section 966 of the *Local Government Act*,

AND WHEREAS the Heritage Lands are subject to Section 54(2) of the *Highways Act* and accordingly the approval of the Minister of Transportation is required pursuant to section 966 of the *Local Government Act*;

AND WHEREAS a local government must hold a Public Hearing on the matter before entering into, or amending, a Heritage Revitalization Agreement if the agreement or amendment would permit a change to the use or density of use that is not otherwise authorized by the applicable zoning of the Heritage Lands and for these purposes Section 890 through 894 of the *Local Government Act* apply;

AND WHEREAS within thirty days after entering into, or amending, a Heritage Revitalization Agreement the local government must file a notice in the Land Title Office in accordance with Section 976 of the *Local Government Act* and give notice to the Minister responsible for the *Heritage Conservation Act* in accordance with Section 977 of the *Local Government Act*;

NOW THEREFORE in consideration of the mutual promises contained in this agreement and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

## **1.0 Heritage Revitalization**

1.1 The parties agree that the Heritage Lands have heritage value, deserving of protection and conservation and the Owner specifically agrees to maintain, preserve and protect the heritage character of the existing building known as the "Hughes-Games House" located on the Heritage Lands in accordance with this agreement.

1.2 The parties agree that the Heritage Lands may, notwithstanding the provisions of City of Kelowna Bylaw requirements related to the existing RU1 – Large Lot Housing zoning on the Heritage Lands, be used for and developed in the following manner, and in accordance with the further provisions of this agreement:

- a) Lot A may be subdivided to create two lots, in accordance with Appendix "A" attached to this agreement, each of which will retain the RU1-Large Lot Housing zoning designation.
- b) A maximum of one Single Detached House will be permitted per newly created lot.
- c) The Hughes-Games House will be relocated to Lot 1, as shown on Appendix "A".
- d) A Single Detached House will be constructed on Lot 2, as shown on Appendix "A", and generally in accordance with the plans and design outlined in Appendix "B" attached to this agreement.
- e) The Owner will apply for formal designation of the Hughes-Games House as a protected heritage property pursuant to the City of Kelowna Heritage Procedures Bylaw No. 7776 and Section 967 of the *Local Government Act*.

(collectively, the "Development")

1.3 The parties agree that, except as varied or supplemented by the provisions of this agreement, all bylaws and regulations of the City and all laws of any authority having jurisdiction shall apply to the Heritage Lands.

1.4 The parties agree that variances to the following subsections of **Section 13 – Urban Residential Zones** of City of Kelowna Zoning Bylaw No. 8000 are granted through this agreement:

**13.1.4 Subdivision Regulations:** vary paragraph (a) as follows:

a) Vary the minimum lot width from 17.0 m required to 9.8 m proposed (front of Lot 2 facing Abbott Street) as shown in Appendix "A".

b) Vary the minimum lot width from 16.5 m required to 12.9 m proposed (rear of Lot 1 adjacent to Okanagan Lake) as shown in Appendix "A".

**13.1.5 Development Regulations:** vary paragraph (d) as follows:

a) Vary the northern minimum side yard setback for Lot 2 from 2.3 m required to 2.0 m proposed as shown in Appendix "A".

b) Vary the southern minimum side yard setback for Lot 2 from 6.0 m required to 4.5 m proposed as shown in Appendix "A".

## **2.0 Landscaping and Servicing Requirements**

2.1 The Owner agrees to undertake and maintain landscaping on the Heritage Lands in general accordance with the landscape plans attached hereto as Appendix "C" and forming part of this agreement.

(the "Landscaping Works")

2.2.1 In addition to the Landscaping Works identified Appendix "C", the Owner agrees that no fencing of any kind will be erected between the newly created lots.

2.2 The Owner agrees to provide and pay for all servicing required by the proposed development of the Heritage Lands and to provide required bonding for same, including, but not limited to: applicable domestic water and fire protection, sanitary sewer, storm drainage, road improvements, road dedications and statutory rights-of-way for utility servicing, power and telecommunication services and street lighting all as noted below and forming part of this agreement.

(the "Works and Utilities Requirements")

### Works & Utilities Requirements

#### **2.2.1 Domestic Water and Fire Protection**

The existing lot is serviced with a small diameter (13-mm) copper water service, which is substandard. Adequate metered water service shall be provided to both Lot 1 and Lot 2 to meet current by-law requirements. The replacement of the existing service for proposed Lot 1 and a new service for proposed Lot 2, will be by City forces. The Owner will be responsible for all related costs of the new services and removal of the existing service.

#### **2.2.2 Sanitary Sewer**

Sanitary sewer service shall be installed to service the new Lot 2 by City forces, to current bylaw standards. The Owner will be responsible for all related costs of installation of the new service.

### 2.2.3 Road Improvements

- (a) The City shall relocate, at the Owner's cost, the existing driveway access on Abbott Street to the proposed location as outlined in Appendix "A" to access Lot 1. Tree removal is not permitted within the Road right-of-way without prior written approval from the city. The cost of this construction for bonding purposes is \$500.00
- (b) The Owner shall remove the existing barrier curb and gutter on Cadder Avenue and construct a driveway letdown to access Lot 2, at the Owner's cost. The cost of this construction for bonding purposes is \$3,000.00

### 2.2.4 Road Dedication Requirements

The Owner shall provide corner- rounding road dedication of 6m radius at the intersection of Abbott Street and Cadder Avenue.

### 2.2.5 Electric Power and Telecommunication Services

The electric and telecommunication services to this house are connected to underground services in the street. Services to the proposed lot shall also be connected with underground services.

### 2.2.6 Geotechnical Report

No requirements.

### 2.2.7 Survey Monuments and Iron Pins

If any legal survey monuments or property iron pins are removed or disturbed during construction, the Owner shall be invoiced and shall pay to the City a flat sum of \$1,200.00 per incident.

### 2.2.8 Bonding and Levy Summary

The Owner shall provide, in a form acceptable to the City, bonding in relation to the noted driveway relocation and curb cuts in the amount of \$3,500.00

### 2.2.9 Site Related Issues

- (c) The Owner shall obtain the necessary permits and have all existing utility services disconnected prior to moving the Hughes-Games House.
- (d) The Owner shall ensure that all site generated storm water is contained and disposed of on the site by installing a ground recharge system consisting of drywells and perforated pipe bedded in drain rock.

## **3.0 Commencement and Completion**

- 3.1 The Owner agrees to commence the Development, the Landscaping Works, and the Works and Utilities Requirements outlined in this agreement, forthwith upon adoption of City of Kelowna Heritage Revitalization Agreement Authorization Bylaw No. 9057 and to complete the above no later than one year following the adoption of Bylaw No. 9057.

#### **4.0 Damage or Destruction**

4.1 In the event that the Hughes-Games House is damaged, the parties agree as follows:

- (a) The Owner may repair the Hughes-Games House, in which event the Owner shall forthwith commence the repair work and complete same within one year of the date of damage;

OR, in the event that the Hughes-Games House is destroyed,

- (b) The City will, by bylaw and after conducting a Public Hearing in the manner prescribed by Sections 890 through 894 of the *Local Government Act*, cancel this agreement whereupon all use and occupation of the Heritage Lands shall thenceforth be in accordance with the zoning bylaws of the City and in accordance with all other bylaws or regulations of the City or any other laws of authority having jurisdiction.

#### **5.0 Breach**

5.1 In the event that the Owner is in breach of any term of this Agreement, the City may give the Owner notice in writing of the breach and the Owner shall remedy the breach within 30 days of receipt of the notice. In the event that the Owner fails to remedy the breach within the time allotted by the notice, the City may by bylaw and after conducting a Public Hearing in the manner prescribed by Sections 890 through 894 of the *Local Government Act* cancel this Agreement whereupon all use and occupation of the Heritage Lands shall thenceforth be in accordance with the zoning bylaws of the City and in accordance with all other bylaws or regulations of the City or any other laws of authority having jurisdiction.

#### **6.0 Amendment**

6.1 The parties acknowledge and agree that this Agreement may only be amended by one of the following means:

- (a) By bylaw with the consent of the parties provided that a Public Hearing shall be held if an amendment would permit a change to use or density of use on site or;
- (b) By Heritage Alteration Permit (HAP), issued pursuant to Section 972 of the *Local Government Act*.

#### **7.0 Representations**

7.1 It is mutually understood and agreed upon between the parties that the City has made no representations, covenants, warranties, promises or agreements expressed or implied, other than those expressly contained in this Agreement.

#### **8.0 Statutory Functions**

8.1 Except as expressly varied or supplemented herein, this Agreement shall not prejudice or affect the rights and powers of the City in the exercise of its statutory functions and responsibilities including, but not limited to, the *Local Government Act* and its rights and powers under any enactments, bylaws, order or regulations, all of which, except as expressly varied or supplemented herein, are applicable to the Heritage Lands.

## **9.0 Enurement**

- 9.1 This Agreement enures to the benefit of and is binding upon the parties hereto and their respective heirs, executors, administrators, successors and assigns.
- 9.2 The City shall file a notice with the land title office, as provided for in Section 966 of the *Local Government Act*, and upon registration of such notice, this agreement and any amendment to it shall be binding on all persons who acquire an interest in the land affected by the agreement.

## **10.0 Other Documents**

- 10.1 The Owner agrees at the request of the City, to execute and deliver or cause to be executed and delivered all such further agreements, documents and instruments and to do and perform or cause to be done and performed all such acts and things as may be required in the opinion of the City to give full effect to the intent of this Agreement.

## **11.0 Notices**

- 11.1 Any notice required to be given pursuant to this Agreement shall be in writing and shall either be delivered mailed by registered mail as follows:

- (a) To the City:

City of Kelowna  
1435 Water Street  
Kelowna, B.C. V1Y 1J4

ATTENTION: City Clerk

- (b) To the Owner:

Crosse-Negrin, Cheryl  
1921 27<sup>th</sup> Street  
West Vancouver, BC  
V7V 4L1

Or to such other address to which a party hereto may from time to time advise in writing.

## **12.0 No Partnership or Agency**

- 12.1 The parties agree that nothing contained herein creates a relationship between the parties of partnership, joint venture or agency.

IN WITNESS WHEREOF this Agreement has been executed by the parties hereto on the day and year first above written.

**CITY OF KELOWNA**  
by its authorized signatories

\_\_\_\_\_  
  
\_\_\_\_\_

**Cheryl Crosse-Negrin**

Signed by Cheryl Crosse-Negrin in the presence of:

\_\_\_\_\_  
Witness (print name)

\_\_\_\_\_  
Cheryl Crosse-Negrin

\_\_\_\_\_  
Address

\_\_\_\_\_  
Occupation

**David Negrin**

Signed by David Negrin in the presence of:

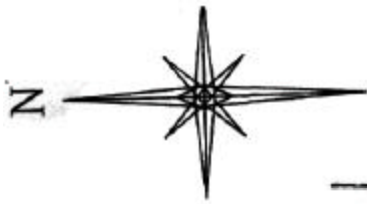
\_\_\_\_\_  
Witness (print name)

\_\_\_\_\_  
David Negrin

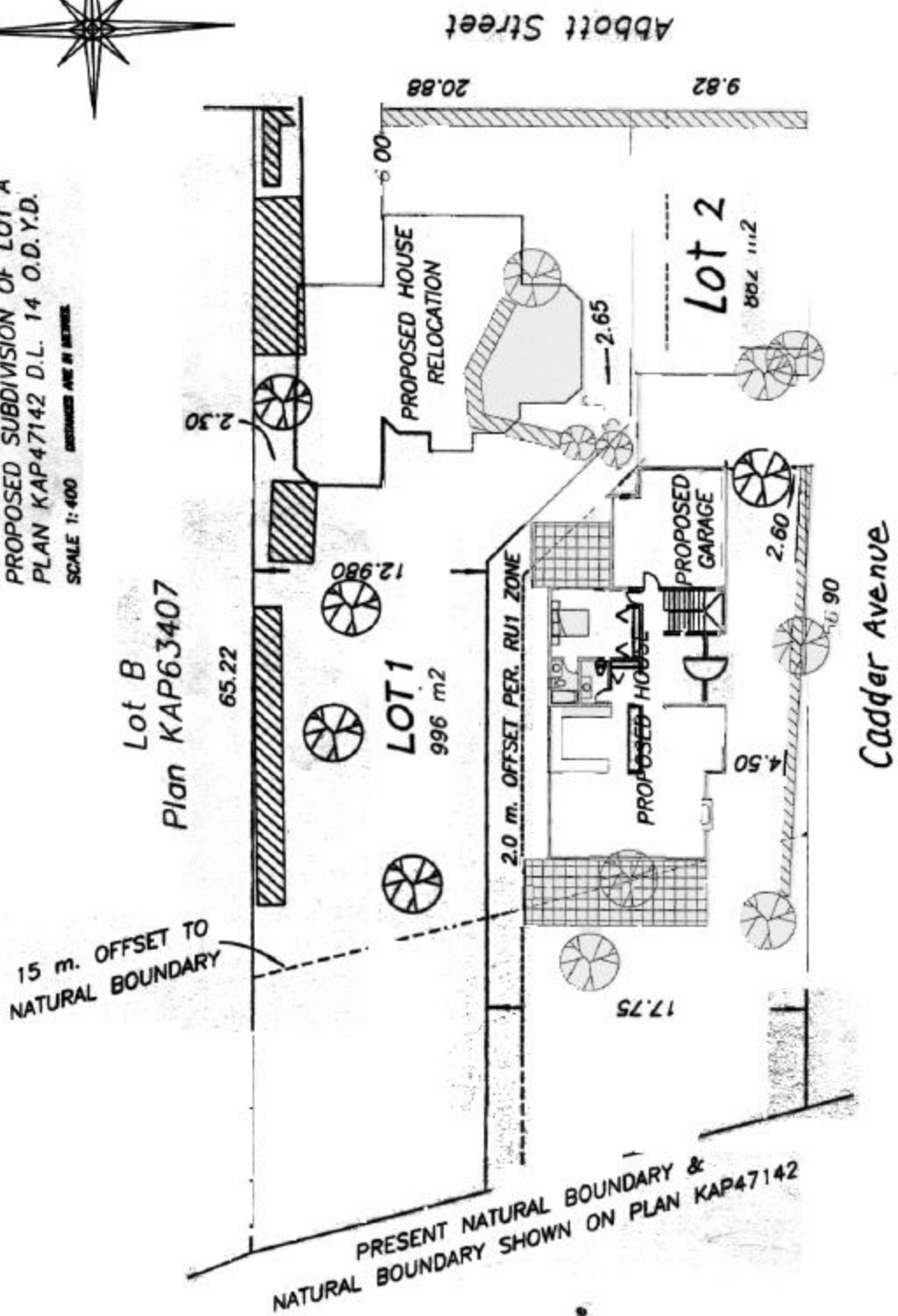
\_\_\_\_\_  
Address

\_\_\_\_\_  
Occupation





PROPOSED SUBDIVISION OF LOT A  
PLAN KAP47142 D.L. 14 O.D.Y.D.  
SCALE 1:400 DISTANCES ARE IN METERS



15 m. OFFSET TO  
NATURAL BOUNDARY

Lot B  
Plan KAP63407

LOT 1  
996 m<sup>2</sup>

Lot 2  
804 m<sup>2</sup>

PROPOSED HOUSE  
RELOCATION

PROPOSED HOUSE  
PROPOSED GARAGE

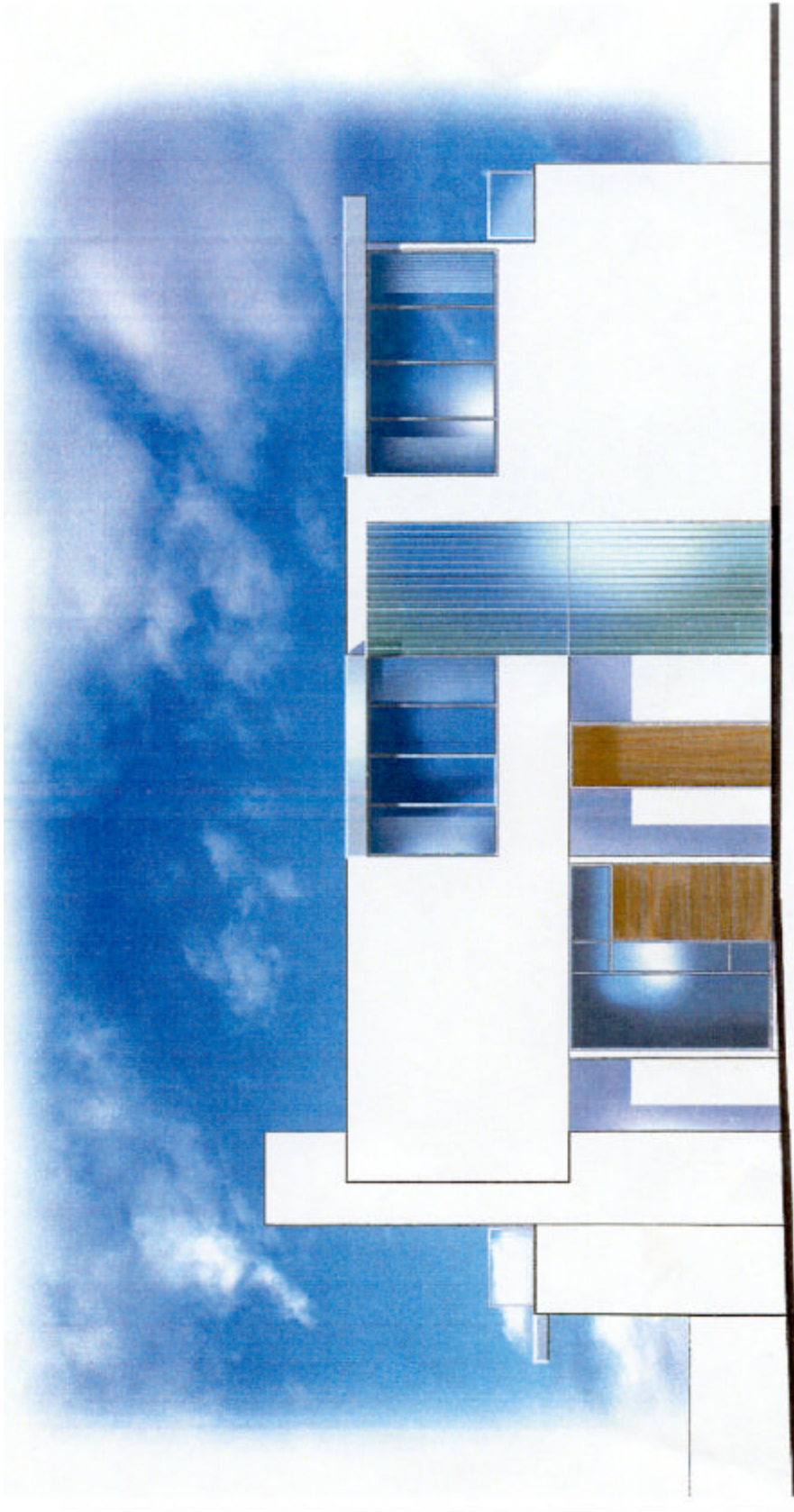
2.0 m. OFFSET PER. RUI ZONE

PRESENT NATURAL BOUNDARY &  
NATURAL BOUNDARY SHOWN ON PLAN KAP47142

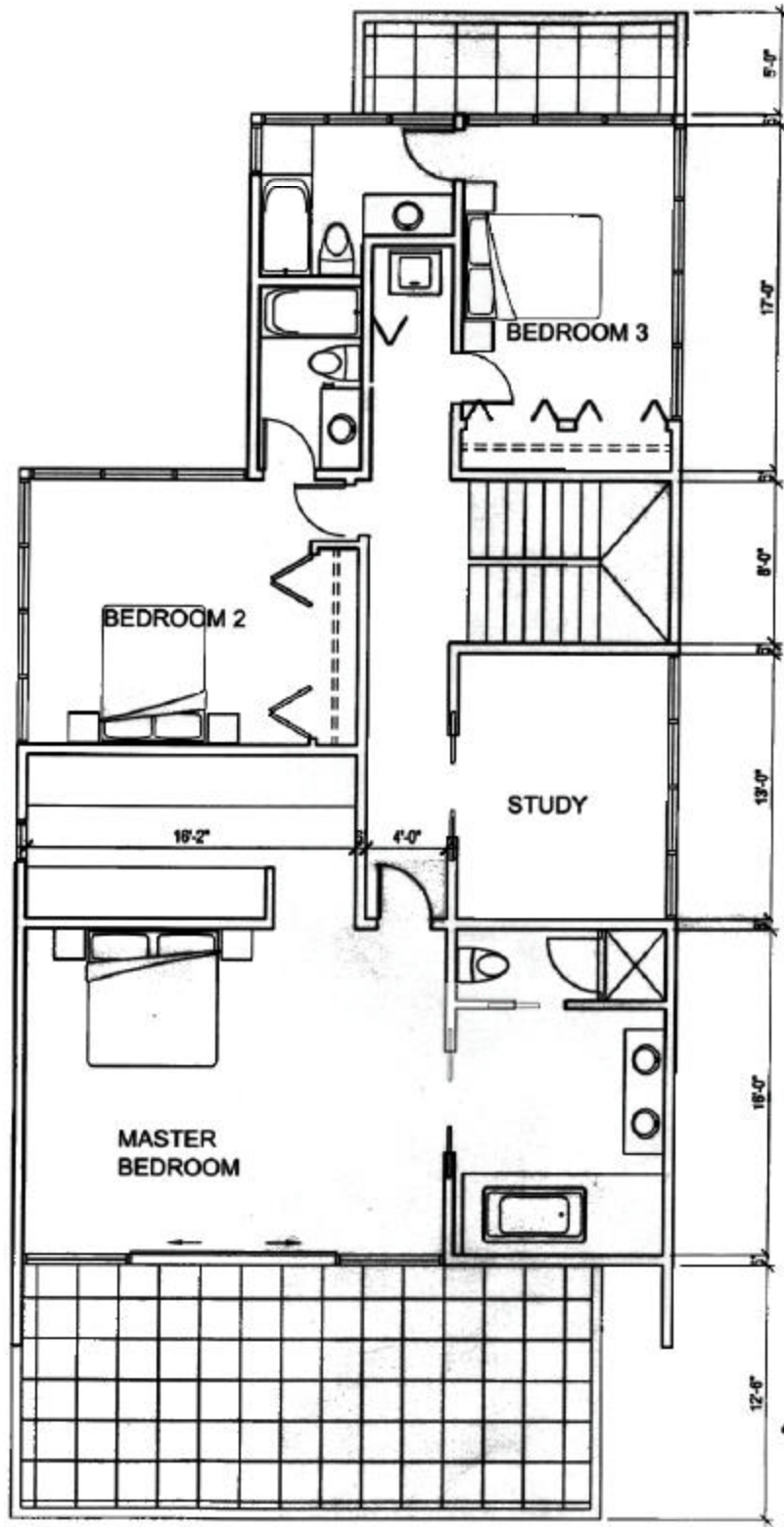
Lake











2ND Floor

