

66

SCHEDULE "B"
COPY OF SERVICING AGREEMENT

DOCUMENT APPROVAL			
Document No. Z95-1055			
Cir.	Department	Date	Init.
	Planning		

THIS AGREEMENT dated as of the 4 day of OCTOBER, 1996
BETWEEN:

TOWER RANCH HOLDING CORPORATION
1300 - 777 Dunsmuir Street
Vancouver, B.C.
V7Y 1K2

(herein called "TOWER RANCH")

AND:

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

(herein called the "CITY")

WHEREAS:

- A. TOWER RANCH is the registered owner in fee-simple of lands and premises known and described as:
- LOT 37, SECTION 31, TOWNSHIP 27, O.D.Y.D., PLAN 1760, EXCEPT PLAN 10627; AND EAST 1/2 OF SECTION 31, TOWNSHIP 27, O.D.Y.D.
- (herein called the "Lands")
- B. TOWER RANCH wishes to develop the Lands to a higher density (herein called the "Higher Density") than is presently permitted under the current zoning of the Lands;
- C. TOWER RANCH has rezoned the Lands to a new zoning [herein called the "R-12 (Comprehensive Residential Golf Resort)" zone] to permit the Higher Density;
- D. The municipal servicing, which presently abuts and services the Lands would be insufficient to service adequately the Lands if the Lands were to be developed to the Higher Density. The development of the Lands to the higher density permitted by the R-12 (Comprehensive Residential Golf Resort) zone requires the following:

1. ROADS

Due to the magnitude of this development two independent routes of access are required:

North Access via new exit road to Latta and McKenzie Road to Old Vernon Road (herein called the "North Access"). The road improvements and new construction for this route are estimated to be \$518,000.00 which includes right-of-way acquisition and 25% bonding escalation. Irrespective of this estimated bonding amount, this route must be improved as further specified under item D.1.(i)(5), to the satisfaction of the City's Works and Utilities Department.

Handwritten calculations and notes:

Wallace - 1406 to Priesen

4,339,000
3,202,000
1,137,000

3,003,000
300,000
3,303,000

1. NORTH ACCESS ROAD 518,000

2. SEWER MAIN EXTENSION 518,000

1,036,000

McKenzie Road upgrading from Latta Road to Old Vernon Road is to be undertaken with the subdivision of the 301st equivalent development unit. The North Access from the Lands to Latta Road, the Latta Road improvements and the McKenzie/Old Vernon Road intersection improvements is to be completed with the subdivision of the 301st equivalent development unit.

West/South Access to be achieved through a staged program combining upgrading of existing roadways and construction of new roads to ultimately provide a road connection from Rutland Road to the Lands as set out below:

<u>ROAD SECTION</u>	<u>ESTIMATED COST</u>	<u>TIMING</u>
(a) Day Road - from the Lands to McKenzie Road	\$ 383,500	To be completed prior to final subdivision approval of first phase of residential subdivision
(b) McKenzie Road - from Day Road to Gibson Road	\$ 259,000	To be completed prior to final subdivision approval of first phase of residential subdivision
(c)(i) McCurdy Road - from Gibson Road to Wallace Road	\$981,000 791,000	Right of Way acquired and dedicated, contract awarded and construction underway prior to final approval of first phase of residential subdivision and completed within one year of start date of construction.
(c)(ii) McCurdy Road - Wallace Road to Craig Road	\$1,250,000 1,810,000	Right of Way acquired and dedicated, contract awarded and construction underway prior to final approval of first phase of residential subdivision and completed within one year of start date of construction.
(d) McCurdy Road - from Keyes Road to Rutland Road	\$ 129,500	Right of Way acquired and dedicated, contract awarded and construction underway prior to final approval of first phase of residential subdivision and completed within one year of start date of construction
TOTAL BONDED VALUE OF ROAD WORK	\$3,003,000	as per above items (a) to (d)
(e) Wallace Road McCurdy Road to Friesen Road	\$ 300,000	To be completed prior to final approval of the first residential subdivision if the necessary R/W for the McCurdy Road (Wallace to Craig Road section) is <u>not</u> available.

981
1250
2231

20458
2,574,000

In recognition that the West/South Access will be attained through a staged program of land acquisition and road upgrading/construction, it is understood:

- (f) Prior to the CITY negotiating and acquiring the McCurdy Road right-of-way from Wallace Road to Craig Road and Keyes Road to Rutland Road a Financial Reimbursement Agreement between the CITY and TOWER RANCH must be in place. This agreement will outline the payment process by TOWER RANCH to the CITY, for the reasonable costs which the CITY incurred. These costs may include but are not limited to:
- Land appraisal and purchase costs;
 - Agent costs;
 - Legal costs; and
 - survey/subdivision costs

For the purposes of bonding reduction, land acquisition shall not be considered as complete until the lands have been dedicated as road rights-of-way and the CITY has been reimbursed by TOWER RANCH.

- (g) TOWER RANCH will not receive Development Cost Charge credits for work completed on (a) Day Road, (b) McKenzie Road, (e) Wallace Road or the North Access. Road Development Cost Charge credits, where applicable, will be based on the actual cost of land acquisition.
- (h) The CITY will purchase the McCurdy Road right-of-way through Lot 4, Plan 1779 and Lot B, Plan 32200 from TOWER RANCH for \$200,000 or the actual acquisition cost per square metre applied to the 25 metre wide right-of-way required, whichever is lesser, and subject to the dedication of the right-of-way. The payment for this acquisition will be in the form of Development Cost Charge credits for the inner city portion of the arterial road Development Cost Charge, as the Land develops.

(i) ROAD STANDARDS will be as follows:

(1) Day Road and McKenzie [road sections (a) and (b)].

A 20 metre right-of-way dedication with widening to improve curve alignments, grade 20 metre cross-section, 11 metre paved rural collector road standard plus asphalt curbs for drainage control, ditch drainage, separate concrete side-walk one side adjacent to property line and street lighting at 50% of the Arterial Road Standard.

(2) McCurdy Road [road section (c) (f)].

A 25 metre right-of-way dedication, grade 20 metre cross-section, 11 metre paved rural standard plus asphalt curbs for drainage control, ditch drainage, separate concrete sidewalk one side adjacent to property line and street lighting at 50% of arterial road standards.

(3) McCurdy Road [road section (d)].

A 25 metre right-of-way dedication, graded to full width of right-of-way, 11 metre paved rural collector standard plus asphalt curbs for drainage control, ditch drainage with piped storm drains, separate concrete sidewalk one side adjacent to property line and street lighting at 50% of the arterial road standard.

(4) Wallace Road [road section (e)].

Upgrading to include road widening on one or both sides to widen the carriageway from 6.5 m to 10.0 m to provide for travel width plus a pedestrian walk area, and a full width overlay.

(5) North Access

- From the Lands to Latta Road, a new road is to be designed and constructed to an urban collector standard.
- Latta Road upgrading to include improving the existing curves at the Latta/Lakha intersection and the curve 100 metres north of the Latta/McKenzie Road intersection. The entire length of Latta Road from the Lands to McKenzie Road (approximately 1350 metres) requires upgrading to a rural standard which will include shoulder widening and an asphalt overlay 6.5 metres in width.
- Improve the vertical and horizontal alignment of the McKenzie/Old Vernon Road intersection.

2. SANITARY SEWER(a) Highway 97 Trunk Main

The Highway 97 sanitary sewer trunk main buy in levy is applicable to this development. Depending on the land use, the EU's (Equivalent Units) shall be collected at the time of final subdivision approval or the building permit stage, with the rate being escalated annually, by bylaw.

(b) Fitzpatrick/Rutland/Wallace/McCurdy/McKenzie/Day Main

Previous development has extended a trunk sanitary sewer main (referred to as the "Hartman" sewer) from Finns and Fitzpatrick Roads to approximately the intersection of Wallace and Sycamore Roads. The City has underwritten the oversizing of this trunk to the value of \$96,600 to meet the needs of the Tower Ranch development. TOWER RANCH shall reimburse the CITY for this cost. The reimbursement will occur at the time of subdivision and the amount shall be underwritten with the creation of the first 300 equivalent development units. Each of the first 300 equivalent development units shall be assessed a levy of \$322 per lot ($96,600 \div 300$) at the time of subdivision.

TOWER RANCH shall also extend the sanitary sewer trunk main from Wallace Road to the westerly boundary of the TOWER RANCH property, prior to the final approval of the first phase of residential

subdivision. The estimated cost of this is \$518,000 and includes a 15% for Engineering with the addition of a further 25% Bonding compounded for bonding escalation.

The above amounts, if unpaid, will be withheld from the off-site road bonding upon completion of the McCurdy, Day and McKenzie Road works, described in D.1.(a), (b), (ci), (cii), (d), and (e) if (cii) cannot be constructed in agreed upon time frame.

(c) Sewer Latecomer Provision

The sewer extension from Wallace Road to the development shall be constructed to the ultimate size required by the CITY. As this main is being installed far in advance of any City requirement, the CITY will not participate in any oversize component. Furthermore, as this is not a recognized DCC main, no sewer development cost charge credit will be applicable. All portions of the main abutting onto private property to the point of entry to the subject lands will be entitled to provisions of a latecomer agreement.

3. DRAINAGE

TOWER RANCH will be liable for the Drainage Works levy, in accordance with the Kelowna Development Cost Charge Bylaw No. 7228, to be paid at the time of application for final approval to subdivide for single family and two family residential development or at the building permit stage for all other development.

4. WATER SUPPLY

TOWER RANCH is to provide assurances that the supply of domestic water and fire protection can be met by Black Mountain Irrigation District (BMID).

(hereinafter collectively referred to as the "SERVICING")

- E. TOWER RANCH has voluntarily agreed, as a matter of commercial expedience and benefit, to waive all rights to any exemption from bylaws adopted by the City that would otherwise be applicable to the development of the Lands, and has agreed that all such bylaws shall be applicable to the Lands notwithstanding Section 993 of the **Municipal Act** and specifically agrees that such bylaws shall have full force and effect concerning the development of the Lands.
- F. The CITY does not have sufficient funds now or in the foreseeable future to upgrade the Servicing to service adequately the Lands if they are developed to the Higher Density;
- G. TOWER RANCH is aware that the CITY does not have sufficient funds to upgrade the Servicing, and accordingly, TOWER RANCH has offered to make a contribution to the CITY to defray the cost of upgrading the Servicing;
- H. The Council of the CITY, in considering the promotion of the health, safety, convenience, and welfare of the public, was of the opinion that the Lands should be rezoned to R-12 (Comprehensive Residential Golf Resort) if funds were available for the construction of the Servicing, and because TOWER RANCH has offered to contribute to the cost of upgrading the Servicing, the Council of the CITY has rezoned the Lands to R-12 (Comprehensive Residential Golf Resort);

1. The CITY has not demanded or requested that TOWER RANCH or any other person pay or contribute any moneys to the CITY to defray the cost of upgrading the Servicing.

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the premises and of the sum of THREE MILLION THREE THOUSAND DOLLARS (\$3,003,000.00) now paid by TOWER RANCH to the CITY in the form of an Irrevocable Letter of Credit (herein called the "Bond") and of \$1.00 now paid by the CITY to TOWER RANCH (receipt and sufficiency whereof is hereby acknowledged by TOWER RANCH), TOWER RANCH and the CITY covenant, agree and confirm each with the other as follows:

1. Development of the lands to a higher density within the R-12 (Comprehensive Residential Golf Resort) zone requires upgrading of the Servicing.
2. The Lands will be more marketable if the Servicing is upgraded.
3.
 - (a) TOWER RANCH will, at its own cost, under the supervision of a Professional Engineer, design and construct the portion of the Servicing as set out in paragraph D.1. and 2(b) hereto (herein called the "SERVICING") within twelve months of the date of this Agreement (together with one 12 month renewal option).
 - (b) The CITY will hold the Bond as security for the completion of the construction of the SERVICING as set out herein.
 - (c) The additional rights and obligations of the CITY and Tower Ranch with respect to the Bond and to the SERVICING are set out in Schedule "A" which forms part of this Agreement.
4. The CITY has made no promises or commitments to TOWER RANCH except as are herein expressly contained with respect to any municipal approvals concerning the Lands or any other lands and nothing herein will be deemed to constitute a waiver of any legal requirements with which TOWER RANCH would otherwise have to comply, and for greater certainty, the CITY has not promised to issue any building permits or pass any regulations or adopt any bylaws with respect to the Lands.
5. TOWER RANCH has provided the Bond to the CITY as a matter of commercial expedience and voluntarily and without protest and without any demand by the CITY and without qualification by any condition. TOWER RANCH confirms that the CITY has requested it to obtain independent legal advice and that it has been fully advised and informed as to its legal rights and obligations regarding this Agreement and all matters related thereto (or has, despite the request of the CITY, elected not to obtain independent legal advice).
6. TOWER RANCH does hereby voluntarily agree, as a matter of commercial expedience and benefit, without protest, compulsion or qualification by any condition whatsoever, that all bylaws of the CITY that would otherwise be applicable to any subdivision of the Lands shall have full force and effect with respect to that subdivision. TOWER RANCH does hereby agree in writing that such bylaws should have such full force and effect with respect to any subdivision of the Lands and does hereby expressly waive the right to claim any exemption from such bylaw(s) pursuant to Section 993 of the **Municipal Act**.

7. "This Agreement is assignable by TOWER RANCH without the consent of the CITY provided that firstly, the Assignee agrees in writing to be bound by the terms and conditions of this Agreement, and secondly, the Assignee posts security acceptable to the City including a Bond of equal value to secure the obligations of TOWER RANCH pursuant to the terms of this Agreement."
8. TOWER RANCH hereby releases and forever discharges the CITY, its employees, officers, agents, and members of Council and their respective heirs, executors, administrators, successors and assigns of and from any and all manner of actions, causes of action, suits, contracts, claims, damages, and costs which as against the CITY or such other persons as aforesaid or any of them now have or at any time hereafter can, shall, or may have for any reason of or arising out of the rezoning of the Lands to the R-12 (Comprehensive Residential Golf Resort) zone or the payment of the Funds or the Bond to the CITY.
9. TOWER RANCH will indemnify and save harmless the CITY, its employees, officers, agents, and members of Council and their respective heirs, executors, administrators, successors and assigns from all loss, damage, costs, actions, and suits which the CITY may suffer or incur to be put to or arising out of or in connection with the rezoning of the Lands to the R-12 (Comprehensive Residential Golf Resort) zone or the payment of the Bond to the CITY.
10. Any portion of this Agreement which shall be found to be unenforceable or invalid at law will be deemed to be severed from this Agreement and the remaining provisions shall nevertheless continue to be in full force and effect, and without restricting the generality of the foregoing, TOWER RANCH specifically confirms the provisions of Clauses 8 and 9.
- 11(a). "TOWER RANCH acknowledges and agrees that the total cost of the SERVICING is \$4,339,000.00. (including Wallace Road article D.1(e)) of which only \$3,003,000.00 is secured by the Bond. Accordingly TOWER RANCH acknowledges and agrees that the Bond will only be reduced for that portion of the SERVICING described in articles D.1(a), (b), (ci), (cii) and (d) and that reduction in the amount of the Bond will only occur after expenditure by TOWER RANCH of the unsecured balance of the costs of the SERVICING in the total amount of \$1,336,000.00, unless the McCurdy Road link (c(i) and c(ii)) is in place prior to triggering the need for Wallace Road as described in article D.1(e)."
- 11(b). In consideration of paragraph 11(a) noted above, from time to time during the term of this agreement, TOWER RANCH may submit to the CITY a certificate from a professional engineer confirming the cost required to complete the Servicing, together with a statutory declaration certifying payment in full of all costs of the Servicing completed to date including, without restricting the generality of the foregoing, all labour, materials, Workers' Compensation assessments, taxes and other charges pertaining to the work completed. Upon receipt of such material, the CITY shall forthwith inspect the Servicing so as to verify completion as certified and upon being satisfied with the certification provided by TOWER RANCH, the CITY shall forthwith partially release the Bond such that the amount of the Bond remaining will equal the cost to complete the Servicing plus 25 percent thereof plus the maintenance retention for the completed servicing plus the amount of the drainage levy yet outstanding. The CITY shall forthwith execute any documents acceptable to the CITY and not inconsistent with this agreement requested by TOWER RANCH or its bank in connection with any such partial release.

12. This Agreement will enure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

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

The Corporate Seal of the Owner(s)
was hereunto affixed this 4 day
of OCTOBER, 1996
in the presence of:

JOE HOUSSIAN

DAN JARVIS

THE CORPORATE SEAL OF THE CITY
OF KELOWNA was hereunto affixed
in the presence of:

Mayor

City Clerk

(Seal)

SCHEDULE "A" - Page 1.

1. TOWER RANCH agrees that if the SERVICING is not completed pursuant to Paragraph 3.(a) hereof, the CITY may complete it, in which event TOWER RANCH shall forfeit the amount secured by the Bond to cover the cost of such completion and shall return to TOWER RANCH such balance of the Bond as shall not be required for completion; less any administration fees or costs incurred directly in respect thereof. If there is insufficient money on deposit with the CITY by reason of the Bond, then TOWER RANCH will pay such deficiency to the CITY immediately upon receipt of the CITY's account for completion. It is understood that the CITY may do such work either by itself or by contractors employed by the CITY. If the SERVICING is completed as herein provided, then the Bond shall be returned to the Owner.
2. TOWER RANCH covenants and agrees to comply with the provisions of all applicable CITY of Kelowna bylaws throughout the construction of the applicable SERVICING. In the event that any material or debris should be left upon any road after the construction of the applicable SERVICING, TOWER RANCH covenants and agrees that the CITY may forthwith remove such material or debris at the expense of TOWER RANCH, the cost of such removal to be determined by the CITY Engineer. In the event that any invoice of the CITY, for the removal of such material or debris, shall remain unpaid thirty (30) days of receipt of same by TOWER RANCH, the CITY is authorized to deduct the amount of such invoice from the Bond.
3. TOWER RANCH shall at all times in connection with the SERVICING, keep and employ a competent general superintendent with the authority to act on behalf of TOWER RANCH and capable of speaking, reading and writing the English language and any explanations, orders, instructions, directions and requests given by the CITY to such superintendent shall be held to have been given to TOWER RANCH.
4. TOWER RANCH covenants and agrees to:
 - (a) Maintain any works to be built according to this Agreement in complete repair for a period of one (1) year from the completion thereof as certified by the CITY Engineer.
 - (b) Remedy any defects appearing within a period of one (1) year from the date of such completion of such works and pay for any damage to other work or property resulting therefrom save and except for defects caused by reasonable wear and tear, negligence of the CITY, its servants or agents, or acts of God or by vandalism proven to have been committed after the date of completion.
 - (c) Leave with the CITY for a period of one (1) year from completion of the SERVICING, as certified by the CITY Engineer, the sum of TWO HUNDRED AND ONE THOUSAND NINE HUNDRED AND FIFTY DOLLARS (\$201,950) for which the Bond shall be security. Should TOWER RANCH fail to maintain the said works, remedy any defect or pay for any damage resulting therefrom, during the one (1) year period the CITY may deduct the cost of completing all works, remedying any defect or paying the damage from the said deposit.
5. TOWER RANCH shall submit to the CITY final as-built drawings on mylar transparencies of all services as constructed and as approved by the CITY Engineer. TOWER RANCH agrees to pay to the CITY all reasonable inspection fees,

SCHEDULE "A" - Page 2.

administration fees, engineering fees, non-refundable levies and charges and legal costs incurred by the CITY directly attributable to this Agreement and the costs of connecting all utilities to service the development contemplated by this Agreement.

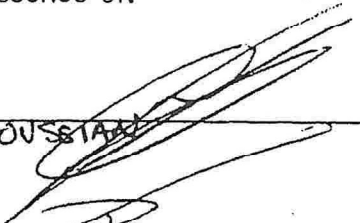
6. TOWER RANCH covenants to save harmless and effectually indemnify the CITY against:
 - (a) All actions and proceeding costs, damages, expenses, claims and demands whatsoever and by whomsoever by reason of the SERVICING.
 - (b) All expenses and costs which may be incurred by reason of this Agreement resulting in damage to any property owned in whole or in part by the CITY or which the CITY by duty or custom is obliged, directly or indirectly, in any way or to any degree, to construct, repair or maintain.
 - (c) All expenses and costs which may be incurred by reasons of liens for non-payment of labour or materials, workers' compensation assessments, unemployment insurance, Federal or Provincial Tax, check off, and for encroachments owing to mistakes in survey.
7. The CITY hereby covenants and agrees with TOWER RANCH to permit TOWER RANCH to perform all the said works pertaining to the servicing herein upon the terms and conditions herein contained.
8. The CITY covenants and agrees that upon satisfactory completion by TOWER RANCH of all of the covenants and conditions in this Agreement, and without limiting the generality of the foregoing, including the maintenance of the said works constructed pursuant to this Agreement and keeping the same in complete repair for a period of one (1) year, to provide TOWER RANCH forthwith with a Certificate of Acceptance of the said works, signed by the CITY Engineer.
9. All works and services, buildings, structures, pipes and fixtures and development constructed, placed or carried out pursuant to the terms of this Agreement upon property that is now, or by this SERVICING to become vested in the CITY or Her Majesty the Queen by dedication, or located upon highways required to be dedicated or upon rights-of-way and that become part of the utility system of the CITY shall, upon acceptance by the CITY in writing, become the property of the CITY free and clear of all claim by TOWER RANCH or any person claiming through TOWER RANCH and TOWER RANCH shall save harmless the CITY from any such claim.
10. It is understood and agreed that before any bond or security required under this Agreement is reduced or released, TOWER RANCH shall provide the CITY with statutory declaration certifying that all labour, material, workers' compensation, and other taxes and costs have been paid.
11. If the Servicing has not been completed within the time contemplated herein, TOWER RANCH shall renew the Bond for a further twelve month period and the parties shall execute the renewal form attached hereto.

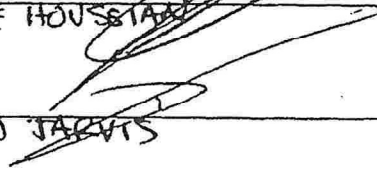
SCHEDULE "A" - Page 3.

RENEWAL

The CITY and TOWER RANCH hereby agree that this Agreement and the Bonding herein is hereby renewed for a further period of twelve (12) months in form identical to this Agreement which renewal is approved by the Approving Officer.

The Corporate Seal of the Owner(s)
was hereunto affixed this 4 day
of OCTOBER, 1996
in the presence of:



JOE HOUSHIAN


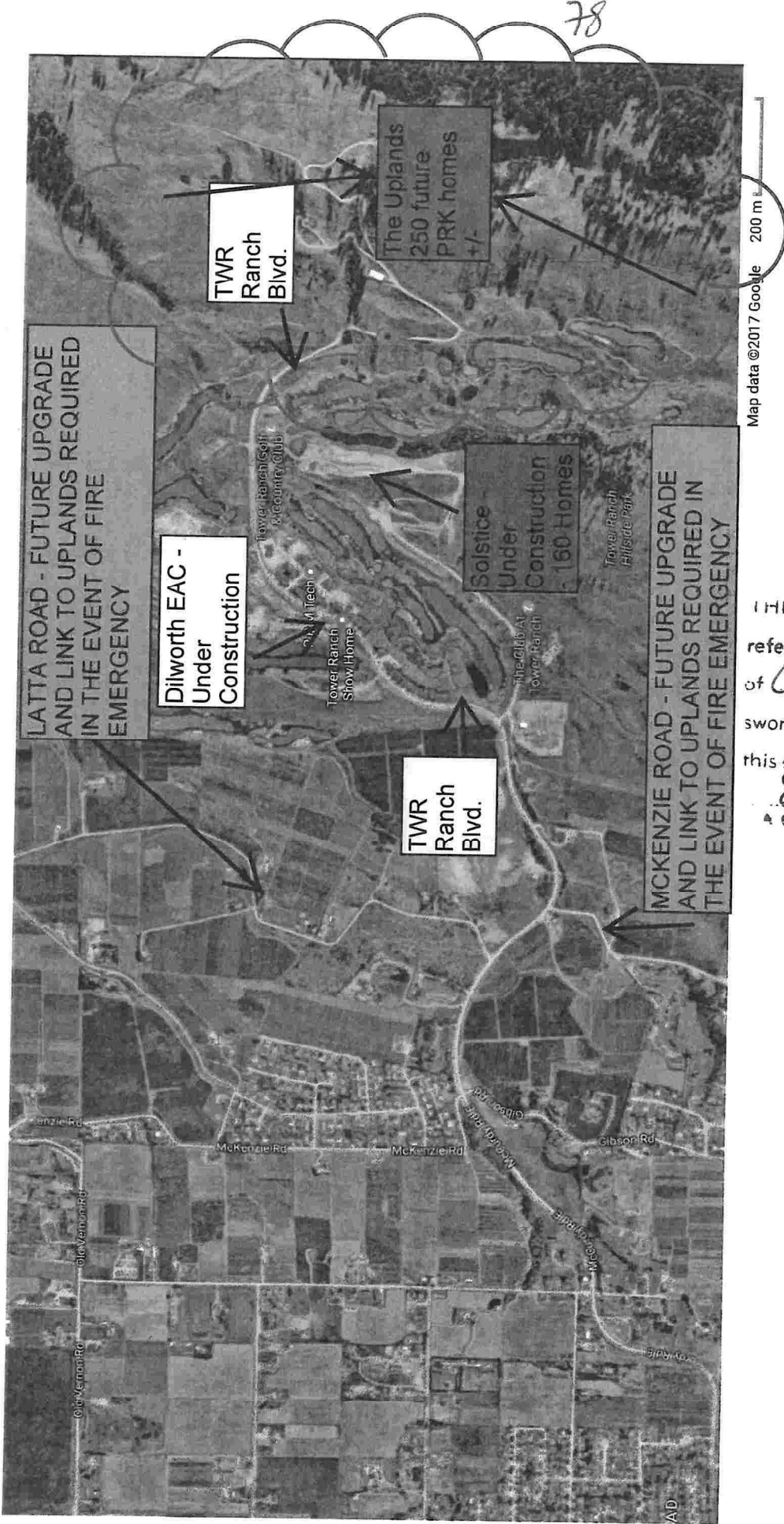
DAN JARVIS

THE CORPORATE SEAL OF THE CITY
OF KELOWNA was hereunto affixed
in the presence of:

Mayor

City Clerk

(Seal)



THIS IS EXHIBIT F
 referred to in Affidavit #1
 of Craig MacLellan
 sworn before me at Kelowna
 this 4th day of May, 2017
Elmer E. [Signature]
 A Commissioner for taking Affidavits
 in the Province of British Columbia

THIS IS EXHIBIT 9
referred to in Affidavit #1
of Craig MacLellan
sworn before me at Kokswo
this 4th day of May 2017
Elin V. Everett
* Commissioner for Taking Affidavits
British Columbia

FIGURE 2 - NEIGHBOURHOOD LOCATION MAP

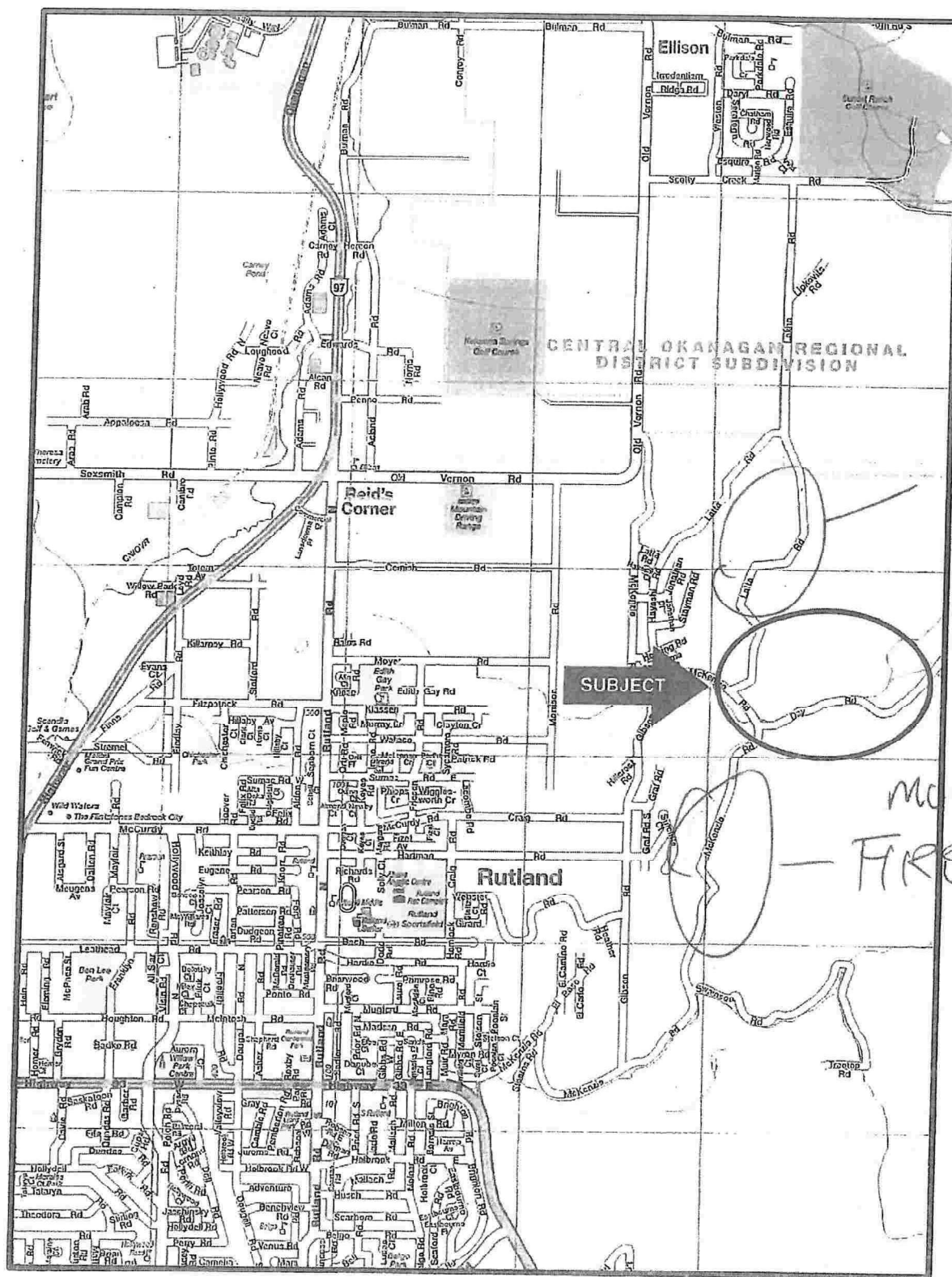
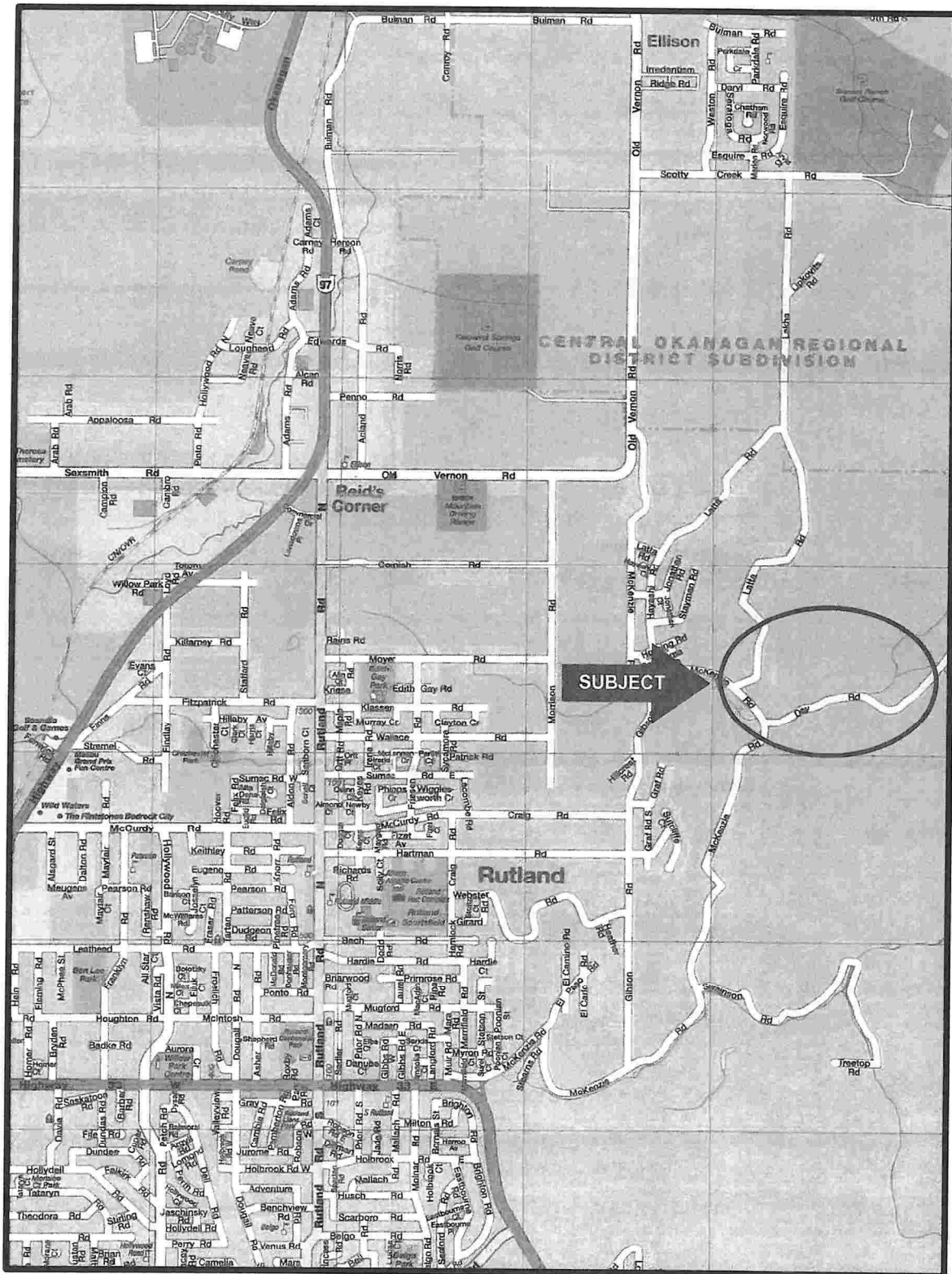


FIGURE 2 - NEIGHBOURHOOD LOCATION MAP

81



Section 5

Property Description

5.1 LOCATION

The subject properties are located within the Tower Ranch master-planned community, which will consist of four distinct neighbourhoods (The Ranch, Park, Clubhouse and Uplands) spread over 446 upland acres overlooking the City of Kelowna. Tower Ranch is named for Stan Tower, a local rancher who found his roots in Kelowna's uplands location.

The Tower Ranch community includes The Club at Tower Ranch, an above average quality, championship level golf course that opened in 2008. The golf course lands comprise an area of 202.38 acres of land contained within four irregular shaped components, all of which are within one legal title. It is estimated that the golf course occupies ± 75 acres, with the remaining ± 127 acres distributed around the golf course. The 18-hole, par 72 course contains undulating fairways lined-with white silica sand bunkers and bent grass greens.

The Tower Ranch community is approved for up to 812 residential units; however, based on development to date of 135 units, inclusive of 93 lots and 42 units, it is unlikely that the density will exceed 750 units. The first development at Tower Ranch was The Ranch, a 52 acre parcel and consists of single-family homes terraced along the ranch's lower slopes with many backing onto the golf course. This first phase of single family homes was developed and offered in 2008. North Pointe on Eighteen was developed by Dilworth Homes in 2013/2014 and included 42 semi-detached townhomes on a site that overlooks the 18th hole and offers views of the golf course, the City of Kelowna and Okanagan Lake. Solstice is a 160 lot bareland strata subdivision located east of the Golf Course clubhouse developed by Parkbridge Lifestyle Communities Inc.. Lots in Solstice are offered on a leasehold basis with 99 year terms, monthly payments, and 3 year rent reviews. Phase 1 sold out in 2016 and Phase 2 is expected in early 2017.

The community of Tower Ranch is surrounded by land within the Agricultural Land Reserve (ALR) that is regulated by the British Columbia Agricultural Land Commission. The land below the golf course is primarily developed to productive fruit orchards while the upland area above and beside the course is used for livestock grazing.



5.2 SITE DESCRIPTION

5.2.1 Upland Development Parcel (Lot 4 Plan KAP80993)

Lot 4 is an irregular shaped 89.2 acre parcel that is situated astride the east boundary of the Tower Ranch community. The site has varying topography, from moderate to steep, but with sections of rolling hills that are well suited to single family development.

Tower Ranch Boulevard terminates at the west boundary of the parcel, approximately mid-way between the north and south boundaries. A paved driveway bisects the parcel, connecting Tower Ranch Boulevard to a private parcel located on the east side of Lot 4. The reservoir for the Tower Ranch development project is located adjacent to the driveway, approximately mid-way between the north and south boundaries, along the east boundary. Lot 4 also abuts and overlooks the 13th, 15th, 16th, and 17th Fairways of the Tower Ranch Golf Course. There are views of the Tower Ranch Community, the City of Kelowna, and Okanagan Lake from Lot 4.

Full urban services are at the lot boundary, though the development of the property will require some off-site works:

- 1) Construction of the North Road connection to Latta Road.
- 2) Upgrade to Latta Road and McKenzie Road.
- 3) A New Booster Station.
- 4) ALR Fencing.
- 5) Tree Screening.
- 6) Fire Mitigation.
- 7) Tertiary Egress.

Items 1 and 2 form are a secondary ingress/egress for Tower Ranch which form part of the original development approval. The requirement for Items 1 and 2 are triggered by development of the 301st unit at Tower Ranch, where a "unit" is defined in the original development agreement by formula, based on single family and multi-family development. It is anticipated that development of the balance of The Ranch and Solstice will trigger the requirement to buildout Items 1 and 2, though the cost has been considered in the valuation of Lot 4.

Item 2 relates to a new booster station that will be required for development of Lot 4, though an early phase may be possible prior to construction of the booster station.

Items 4, 5, and 6 relate to fencing requirements, some tree screening, and fire mitigation.

Item 7 is somewhat unique as it has not yet been a formal request from the City of Kelowna, but recent discussions indicate that it may be a requirement for development. Although Item 1 will provide secondary egress from the project, the City desires a tertiary egress from the east end of the project. Though no planning currently exists for an egress road, Scotty Creek Road is the closest public road to Lot 4, situated ± 1.25 kilometres to the north. Discussions with a local engineering company revealed that a rural standard road has been approved in another development project to facilitate a similar emergency egress.

WSP has provided two plausible subdivision layouts, ranging from 247 to 257 single family lots predominantly on the northerly $2/3^{\text{rds}}$ of the property, as the southerly ± 17 acres are typically too steep for development. Furthermore, neither of the WSP layouts provided an egress route from the east side of Lot 4, allowing for a loss of two lots from both layouts, to facilitate road extension, Lot 4 has the reasonable potential for between 245 and 255 single family lots, say an average of 250 lots.

Although Lot 4 Plan KAP80993 is an 89.2 acre parcel, the southerly ± 17 acres are generally too steep for development and the site is bisected by a ± 5 acre ravine and watercourse, such that no lots have been planned within this part of the property, rendering an effective developable area of: 89.2 acres – 17 acres – 5 acres = 67 acres. Based on the potential development of 250 single family lots, the probable density for the site is 3.8 units per acre.



LOT 4 Plan KAP80993

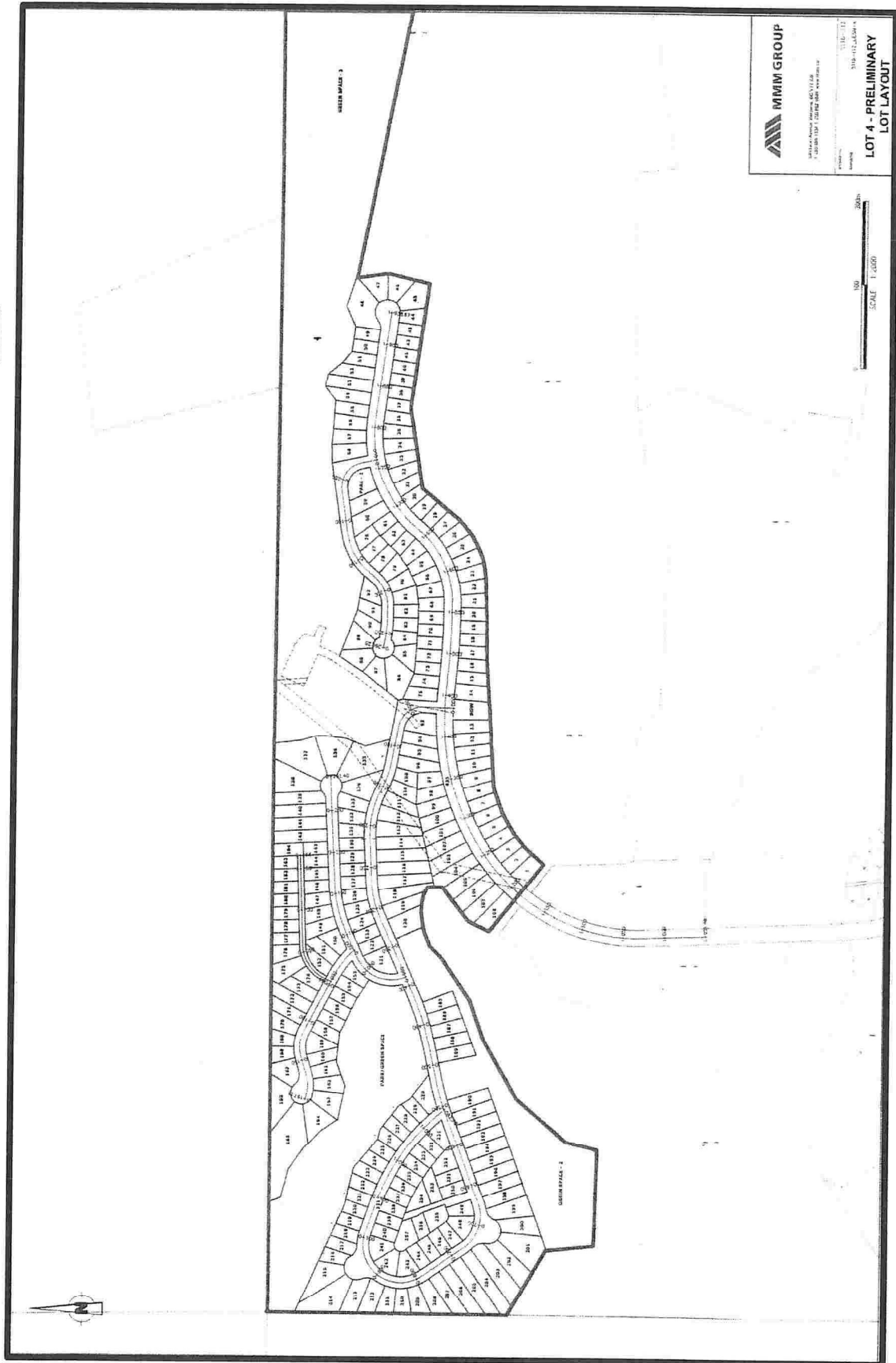


FIGURE 4 - 257 LOT LAYOUT

LOT 4 Plan KAP80993

FIGURE 5 - 247 LOT LAYOUT

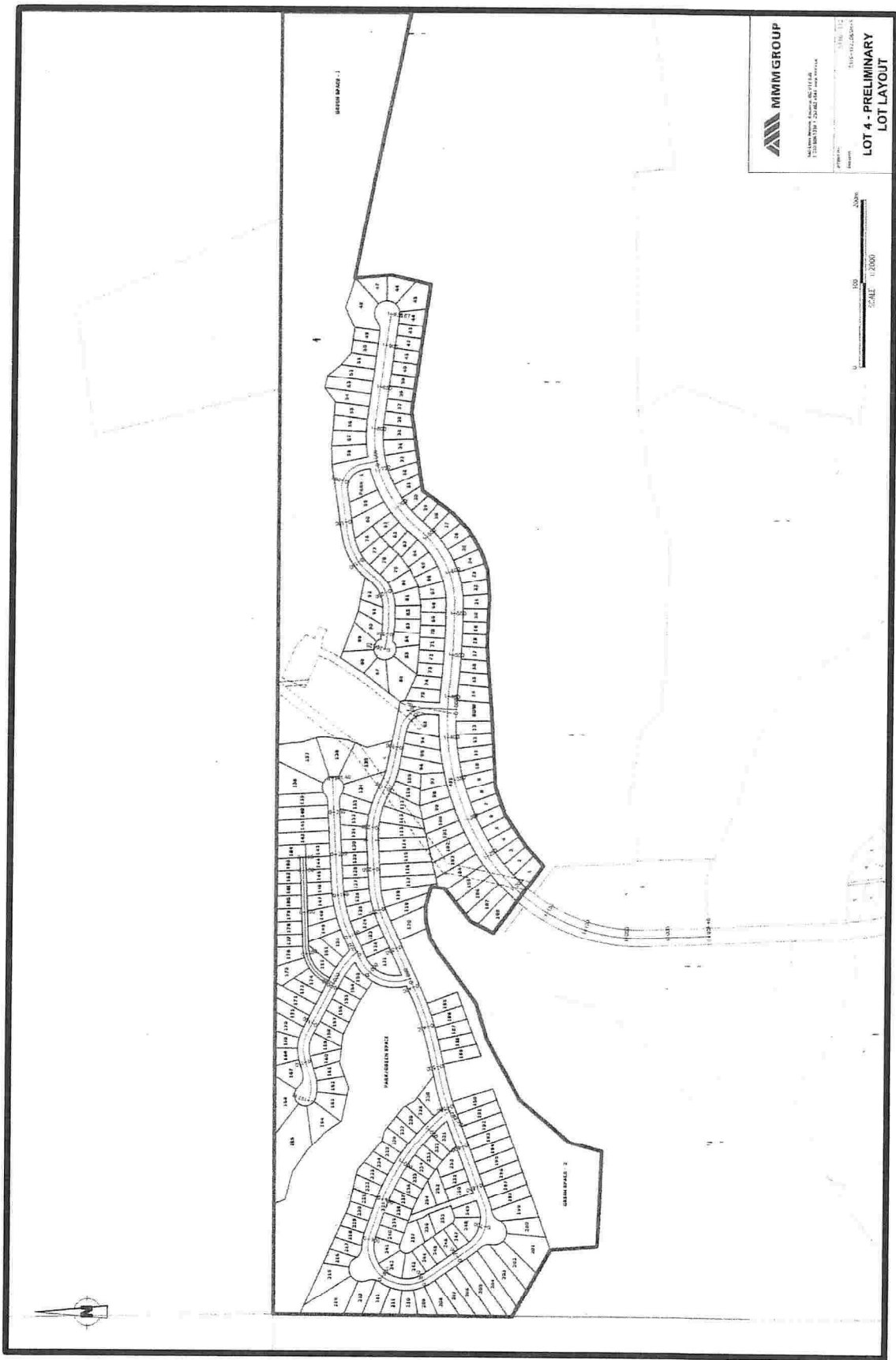
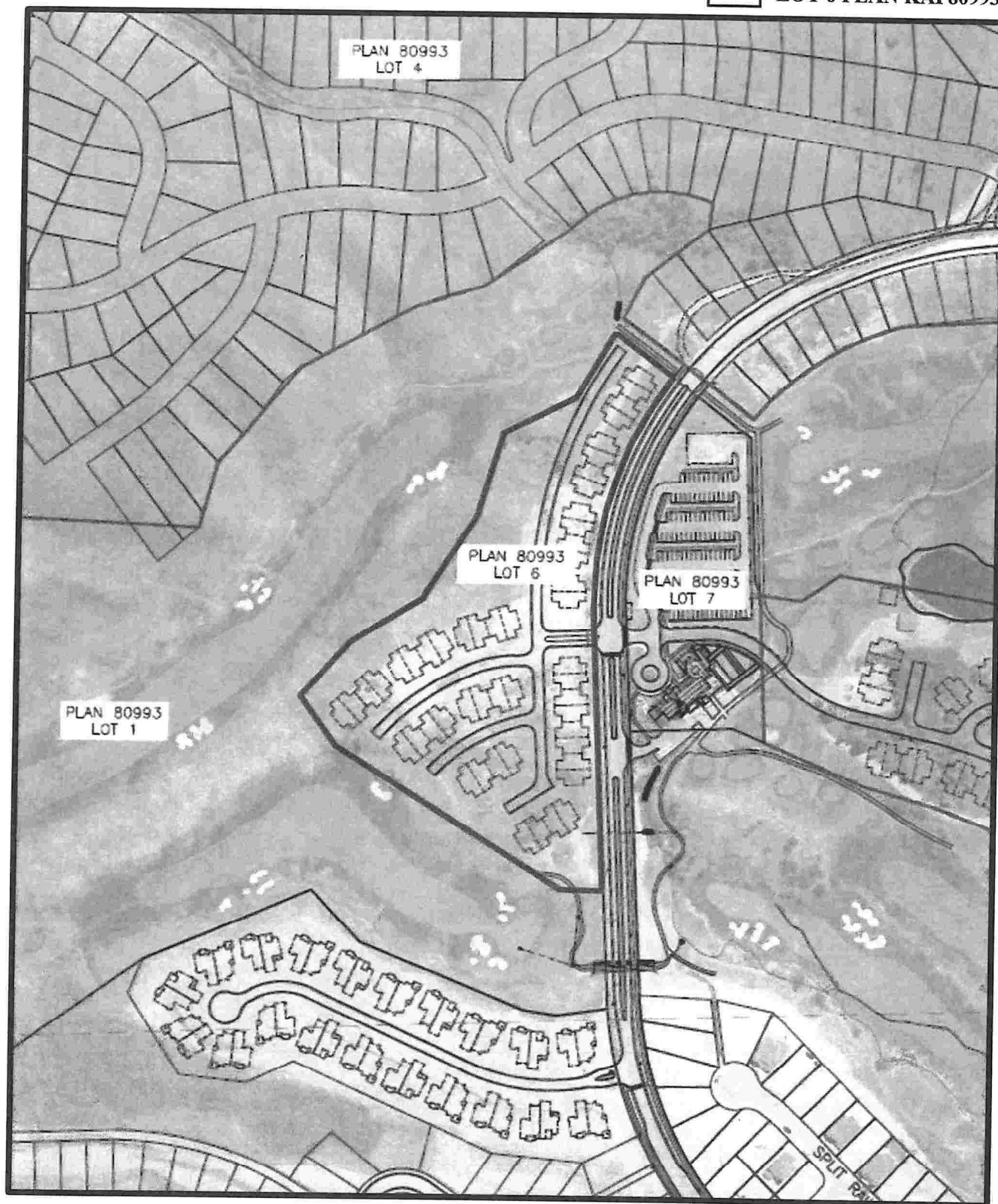


FIGURE 6 - LOT 6 50 UNIT LAYOUT

88

48

LOT 6 PLAN KAP80993



**IN THE SUPREME COURT OF BRITISH
COLUMBIA**

BETWEEN:

EMIL ANDERSON CONSTRUCTION CO. LTD.

PETITIONER

AND:

0977415 B.C. LTD., 0977422 B.C. LTD.,
PARKBRIDGE LIFESTYLE COMMUNITIES
INC., TOWER RANCH COMMUNITY
ASSOCIATION INC., and others

RESPONDENTS

AFFIDAVIT

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