

Rothesay

DEVELOPMENT AGREEMENT

Land Titles Act, S.N.B. 1981, c.L-1.1, s.24

Parcel Identifier of Parcels Burdened by Agreement: 00242271, 30130348, 30020051, 30130355
(to be consolidated)

Owner of Land Parcels: **KV Properties Ltd.**
1 Magnolia Lane
PO Box 100
Rothesay, NB
E2E 3L2 (Hereinafter called the "Developer")

Agreement with: **Rothesay**
70 Hampton Road
Rothesay, N.B.
E2E 5L5 (Hereinafter called the "Town")

a body corporate under and by virtue of the Local Governance Act, RSNB 2017, Chapter 18, located in the County of Kings and Province of New Brunswick

WHEREAS the Developer is the registered owner of certain lands located off Woodland Avenue (PIDs 00242271, 30130348, 30020051, 30130355) and which said lands are more particularly described in Schedule A hereto (hereinafter called the "Lands");

AND WHEREAS the Developer is now desirous of entering into a development agreement to allow for the development of thirty-six (36) unit apartment building on the Lands as described in Schedules B through D. (herein after called the "Project")

AND WHEREAS Rothesay Council did, on **INSERT DATE**, authorize the Mayor and Clerk to enter into a Development Agreement with **CORPORATE NAME** to develop a residential apartment building on the Lands.

NOW THEREFORE THIS AGREEMENT WITNESSETH that for and in the consideration of the mutual covenants and agreements herein expressed and contained, the parties hereto covenant and agree as follows:

1. The Developer agrees that the total number of residential units situated on the Lands shall not exceed thirty-six (36) residential apartment units.

Schedules

2. The Developer agrees to develop the Lands in a manner, which, in the opinion of the Development Officer, is generally in conformance with the following Schedules attached to this Agreement:
 - a. Schedule A Legal Description of Parcels
 - b. Schedule B Proposed Site Plan and Location of Buildings
 - c. Schedule C Building Elevations (4)
 - d. **Schedule D Landscape Plan**
 - e. **Schedule E Storm Water Management Plan**

Site Development

3. The Developer agrees that except as otherwise provided for herein the use of the Lands shall comply with the requirements of the Rothesay Zoning By-law and Subdivision By-law, as may be amended from time to time.
4. The Developer agrees to develop the Lands in a manner, which, in the

opinion of the Development Officer, is generally in conformance with Schedules B, C, D and E.

Architectural Guidelines

5. The Developer agrees that an objective of this development is to provide a high quality and visually attractive development, which exhibits an architectural design that reinforces the community character and that is generally consistent with the existing styles of housing in Rothesay. The Developer agrees to ensure the following:
 - a. The architectural design of the building shall be, in the opinion of the Development Officer, generally in conformance with Schedule C.
 - b. All exterior mounted ventilation and related mechanical equipment, including roof mechanical units, shall be concealed by screening in a manner to reduce clutter and negative impacts on the architectural character of the building.

Storm Water

6. The Developer shall carry out, subject to inspection and approval by Town representatives, the installation of a storm water system as per Schedule E of this agreement. The Developer agrees to accept responsibility for all costs associated such installation including the following:
 - a. Construction, to Town standards, of a storm water system including pipes, fittings, precast sections for manholes and catch basins capable of removing surface water from the entire developed portion of the lands to a predetermined location selected by the Developer's Engineer and approved by the Town Engineer; and
 - b. Topsoil and hydro-seeding of shoulders of roadways.
7. The Developer agrees to submit for approval by the Town, prior to commencing any work on the storm water system such plans, as required by the Town, that shall conform with the design schematics and construction standards of the Town, unless otherwise acceptable to the Town Engineer.
8. The Developer agrees that all roof leaders, down spouts, and other storm water drains from the building, parking lot and landscape features shall not be directed or otherwise connected or discharged directly to the Town's storm water or sanitary collection system.
9. The Developer agrees to provide to the Town Engineer written certification of a Professional Engineer, licensed to practice in New Brunswick that the storm water system has been satisfactorily completed and constructed in accordance with the Town specifications.

Municipal Streets

10. The Developer shall carry out, subject to inspection and approval by Rothesay representatives, and pay for the entire actual cost of the following:
 - a. surveying and staking of lots and streets;
 - b. rough grading of streets to profiles approved by Rothesay;
 - c. fine grading of streets to profiles approved by Rothesay;
 - d. hard surfacing of the streets as shown on the plan to Rothesay specifications; sub-grade standards, compaction and finish as approved by Rothesay's Engineer, in writing, before final hard surfacing may be installed;
 - e. constructing the proposed connection of Woodland Avenue to Hampton as approved by Rothesay's Engineer;

- f. supply and maintenance of for a period of two (2) years the topsoil, sod, landscaping and the planting of street trees calculated as no more than one tree for each 10 meters measured along the linear centre line of the public street right of way, planted on location(s) approved by Rothesay and where such street trees are as follows:
 - i. Not smaller than six centimeters (6 cm) in diameter measured at a point being 2 meters above the root ball such trees species as approved by Rothesay.
 - ii. Inspected by Rothesay 12 months from time of planting and again then at 24 months. The Developer shall replace trees identified for replacement during warranty inspections.
 - g. Engineering design and inspection of those works referred to in clauses b), c) d), e) and f) of this section.
11. The Developer agrees to provide signed documentation and progress reports from a practicing Professional Engineer, licensed in New Brunswick ensuring that applicable codes and standards have been met and that the work was completed and utilizing such materials as in accordance with the terms of this Agreement and approved specifications.
12. The Developer agrees to provide as-built drawings that delineate all public infrastructure to be submitted to Rothesay in compliance with the minimum standards and requirements specified in Rothesay's Digital Data Submission Standards for Infrastructure and Construction Drawings.
13. Rothesay reserves the right to assign or rename public street names, notwithstanding that names may not correspond with existing names.
14. The Developer agrees that all items, materials, pipes, fittings, and other such infrastructure following acceptance of delivery on site by the Developer shall remain the full responsibility of the Developer against their accidental breakage or vandalism until Rothesay accepts the completed works.
15. The Developer agrees to restore all disturbed or damaged areas of the public street and right of way to the satisfaction of Rothesay's Engineer following installation of the required municipal services.

Municipal Sidewalks

16. The Developer shall carry out and pay for the entire actual cost of a public sidewalk and associated barrier curbing as required to comply with Town standards within the Town right-of-way and extending the sidewalk from the proposed building to the intersection of Woodland Avenue and Hampton Road, subject to inspection and approval by Rothesay's Engineer, including the following:
- a. supply and maintenance of for a period of one (1) year the topsoil, sod, landscaping and the planting of street trees located every 10 meters, or an equivalent number planted in locations approved by the Town, along the length of the public road right-of-way where such trees are as follows:
 - b. Not smaller than six centimetres (6 cm) in diameter measured at a point being 2 meters above the root ball such trees species as approved by the Development Officer.

Water Supply

17. The Developer agrees to connect to the Town's nearest and existing water system at a point to be determined by the Town Engineer and utilizing methods of connection approved by the Town Engineer.
18. The Town agrees to supply potable water for the purposes and for those

purposes only for a maximum of thirty-six (36) residential dwellings and for minor and accessory purposes incidental thereto and for no other purposes whatsoever.

19. The Developer agrees to pay the Town a fee for connection of the building to the Town water system including sprinkler feed to the Town water system calculated in the manner set out in By-law 1-18, Rothesay Water By-law as amended from time to time, to be paid to the Town twelve (12) months following the issuance of the building permit.
20. The Developer agrees that the Town does not guarantee and nothing in this Agreement shall be deemed a guarantee of an uninterrupted supply or of a sufficient or uniform water pressure or a defined quality of water. The Town shall not be liable to the Developer or to any person, firm or corporation for any damage or injury caused by the interruption of the supply of water, the lack of uniform pressure thereof or the quality of water.
21. The Developer agrees that all connections to the Town water mains shall be approved and inspected by the Town Engineer or such other person as is designated by the Town prior to backfilling and that the operation of water system valves is the sole responsibility of the Town.
22. The Developer agrees to comply with the Town's Water By-law and furthermore that a separate water meter shall be installed, at their expense, for each residential connection made to the Town's water system.
23. The Developer agrees that the Town may terminate the Developer's connection to the Town water system in the event that the Town determines that the Developer is drawing water for an unauthorized purpose or for any other use that the Town deems in its absolute discretion or if an invoice for water service is more than 90 days in arrears.
24. The Developer agrees to provide, prior to the occupation of the building, written certification of a Professional Engineer, licensed to practice in New Brunswick that the connection to the Town water system has been satisfactorily completed and constructed in accordance with the Town specifications.

Sanitary Sewer

25. The Developer agrees to connect to the existing sanitary sewer system at a point to be determined by the Town Engineer and utilizing methods of connection approved by the Town Engineer.
26. The Developer agrees to pay the Town a fee for connection to the Town sewer system calculated in the manner set out in By-law 1-15 Rothesay Sewage By-law, as amended from time to time, to be paid to the Town twelve (12) months following the issuance of the building permit.
27. The Developer agrees to carry out subject to inspection and approval by Town representatives, and pay for the entire actual costs of Engineering design, supply, installation, inspection and construction of all service lateral(s) necessary to connect to the existing sanitary sewer system inclusive of all pipes, laterals, fittings, and precast concrete units.
28. The Developer agrees to submit for approval by the Town, prior to commencing any work to connect to the sanitary sewer system, any plans required by the Town, with each such plan meeting the requirements as described in the Town specifications for such development.
29. The Developer agrees that connection to the Town sanitary sewer system shall be supervised by the Developer's engineer and inspected by the Town Engineer or such other person as is designated by the Town prior to backfilling and shall occur at the sole expense of the Developer.

Retaining Walls

30. The Developer agrees that dry-stacked segmental concrete (masonry block) gravity walls shall be the preferred method of retaining wall construction for the purpose of erosion control or slope stability on the Lands and furthermore that the use of metal wire basket cages filled with rock (gabions) is not an acceptable method of retaining wall construction.
31. The Developer agrees to obtain from the Town a Building Permit for any retaining wall, as required on the Lands, in excess of 1.2 meters in height and that such retaining walls will be designed by a Professional Engineer, licensed to practice in New Brunswick.

Indemnification

32. The Developer does hereby indemnify and save harmless the Town from all manner of claims or actions by third parties arising out of the work performed hereunder, and the Developer shall file with the Town prior to the commencement of any work hereunder a certificate of insurance naming the Town as co-insured evidencing a policy of comprehensive general liability coverage on "an occurrence basis" and containing a cross-liability clause which policy has a limit of not less than Two Million Dollars (\$2,000,000.⁰⁰) including a project wrap-up liability policy (with no less than 24 months coverage after project completion). The aforesaid certificate must provide that the coverage shall stay in force and not be amended, canceled or allowed to lapse within thirty (30) days prior to notice in writing being given to the Town. The previously mentioned insurance coverage must remain in full force and effect during the period available to the Developer pursuant to this agreement to complete the work set out as described in this Agreement.

Notice

33. Any notice or advice which is to be given under this Agreement shall be deemed to have been satisfactorily given to the Developer if delivered personally or by prepaid mail addressed to **KV Properties Ltd.**, 1 Magnolia Lane, PO Box 100, Rothesay, NB, E2E 3L2 and to the Town if delivered personally or by prepaid mail addressed to **ROTHESAY**, 70 HAMPTON ROAD, ROTHESAY, NEW BRUNSWICK, E2E 5L5. In the event of notice by prepaid mail, the notice will be deemed to have been received four (4) days following its posting.

By-laws

34. The Developer agrees to be bound by and to act in accordance with the By-laws of the Town as amended from time to time and such other laws and regulations that apply or that may apply in the future to the site and to activities carried out thereon.

Termination

35. The Town reserves the right and the Developer agrees that the Town has the right to terminate this Agreement without compensation to the Developer if the specific proposal has not been completed on or before **INSERT DATE** being a date 5 years (60 months) from the date of Council's decision to enter into this Agreement. Accordingly, the Agreement shall have no further force or effect and henceforth the development of the Lands shall conform to the provisions of the Rothesay Zoning By-law.
36. Notwithstanding the preceding paragraph (47) above, the Parties agree that the development shall be deemed to have commenced if within a period of not less than three (3) months prior to **INSERT DATE** the construction of the municipal service infrastructure has begun and that such construction is deemed by the Development Officer in consultation with the Town Engineer as being continued through to completion as continuously and expeditiously as deemed reasonable.
37. The Developer agrees that should the Town terminate this Agreement the

Town may call the Letter of Credit described herein and apply the proceeds to the cost of completing the work or portions thereof as outlined in this Agreement. If there are amounts remaining after the completion of the work in accordance with this Agreement, the remainder of the proceeds shall be returned to the Institution issuing the Letter of Credit. If the proceeds of the Letter of Credit are insufficient to compensate the Town for the costs of completing the work mentioned in this Agreement, the Developer shall promptly on receipt of an invoice pay to the Town the full amount owing as required to complete the work.

Security & Occupancy

38. The Town and Developer agree that Final Occupancy of the proposed building(s), as required in the Building By-law, shall not occur until all conditions above have been met to the satisfaction of the Development Officer and an Occupancy Permit has been issued.
39. Notwithstanding Schedule D and E of this Agreement, the Town agrees that the Occupancy Permit may be issued provided the Developer supplies a security deposit in the amount of one hundred twenty percent (120%) of the estimated cost to complete the required storm water management and landscaping. The security deposit shall comply with the following conditions:
 - a. security in the form of an automatically renewing, irrevocable letter of credit issued by a chartered bank dispensed to and in favour of Rothesay;
 - b. Rothesay may use the security to complete the work as set out in Schedule D and E of this Agreement including landscaping or storm water works not completed within a period not exceeding six (6) months from the date of issuance of the Occupancy Permit;
 - c. all costs exceeding the security necessary to complete the work as set out in Schedule D and E this Agreement shall be reimbursed to Rothesay; and
 - d. any unused portion of the security shall be returned to the Developer upon certification that the work has been completed and acceptable to the Development Officer.

Failure to Comply

40. The Developer agrees that after sixty (60) days written notice by the Town regarding the failure of the Developer to observe or perform any covenant or condition of this Agreement, then in each such case:
 - (a) The Town shall be entitled to apply to any court of competent jurisdiction for injunctive relief including an order prohibiting the Developer from continuing such default and the Developer hereby submits to the jurisdiction of such Court and waives any defense based upon the allegation that damages would be an adequate remedy;
 - (b) The Town may enter onto the Lands and perform any of the covenants contained in this Agreement or take such remedial action as is considered necessary to correct a breach of the Agreement, whereupon all reasonable expenses whether arising out of the entry onto the Lands or from the performance of the covenants or remedial action, shall be a first lien on the Lands and be shown on any tax certificate issued under the Assessment Act;
 - (c) The Town may, by resolution of Council, discharge this Agreement whereupon this Agreement shall have no further force or effect and henceforth the development of the Lands shall conform with the provisions of the Land Use By-law; and/or
 - (d) In addition to the above remedies, the Town reserves the right to pursue any other remediation under the *Community Planning Act* or Common

Law in order to ensure compliance with this Agreement.

Entire Agreement

41. This Agreement contains the whole agreement between the parties hereto and supersedes any prior agreement as regards the lands outlined in the plan hereto annexed.

Severability

42. If any paragraph or part of this agreement is found to be beyond the powers of the Town Council to execute, such paragraph or part or item shall be deemed to be severable and all other paragraphs or parts of this agreement shall be deemed to be separate and independent therefrom and to be agreed as such.

Reasonableness

43. Both parties agree to act reasonably in connection with any matter, action, decision, comment or approval required or contemplated under this Agreement.

This Agreement shall be binding upon and endure to the benefit of the Parties hereto and their respective heirs, administrators, successors and assigns.

IN WITNESS WHEREOF, each of the parties set out below has caused this Agreement, made in duplicate, to be duly executed by its respective, duly authorized officer(s) as of _____, 2022.

Witness:

KV Properties Ltd.

Brett Taylor, Director

Rothesay

Witness:

Nancy E. Grant, Mayor

Witness:

Mary Jane E. Banks, Clerk

SCHEDULE A

PID: | 00242271, 30130348, 30020051, 30130355 (TO BE CONSOLIDATED)



"Not For Construction"

ISSUE	DESCRIPTION	DATE
01		

THESE DRAWINGS / RENDERINGS ARE THE INTELLECTUAL PROPERTY OF SPITFIRE DESIGN CO AND ALL COPYRIGHT IS RESERVED. NO USE MAY BE MADE OF THOSE DRAWINGS / RENDERINGS (OR PART OF THEM) WITHOUT WRITTEN CONSENT FROM SPITFIRE DESIGN CO.

THIS DRAWING MAY NOT BE USED IN WHOLE OR IN PART FOR ANY PROJECT OTHER THAN THAT DESIGNATED HEREIN.

ANY CHANGES TO THIS DESIGN, PRIOR TO OR DURING CONSTRUCTION, MUST BE APPROVED BY THE ARCHITECT & ARCHITECTURAL DESIGNER.

ALL CONTRACTORS MUST CONFORM TO ALL REGULATIONS, MUNICIPAL AND PROVINCIAL BY-LAWS AND "THE NATIONAL BUILDING CODE OF CANADA".

ALL REQUIRED PERMITS MUST BE OBTAINED PRIOR TO ANY CONSTRUCTION.

Rev.#	Description	Date

Stamp:

Architectural Consultant:

Architectural Designer:

*** spitfire ***
DESIGN CO.
171 Lutz Street, Moncton, NB E1C 5E8
Bus: (506) 855-3777 Cell: (506) 392-2777 eMail: denis@spitfiredesign.co

Client: **KV PROPERTIES**

Project: **APARTMENT**
95 Hampton Road Rothesay, Moncton

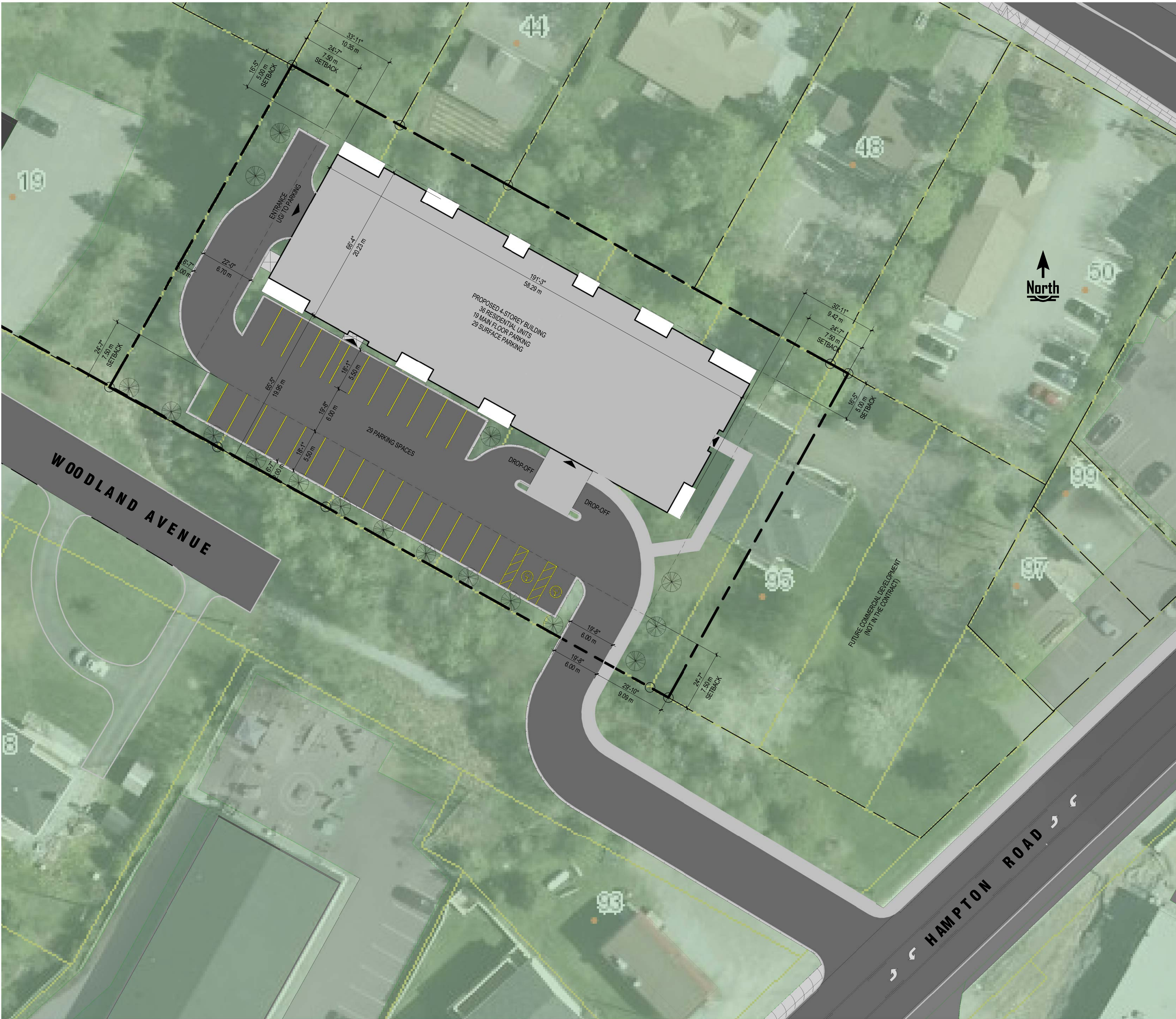
Drawing Title: **SITE PLAN**

Date:	16 DEC, 2021
Checked by:	D.M.
Drawn by:	E.C.
Scale:	AS NOTED
Sheet:	A0.1
Flight no:	4405

SCHEMATIC SUMMARY	
LOT INFO	
PID	00242271.30130355.30020051
Physical Address	30130348.00242495.30130330
Lot Area	3601.20 Sqm
Current Zoning	R1B
Proposed Zoning	Multi-Unit Residential (R4)
Required Green Space	Min. of 30% Landscape Area
Proposed Green Space	1625.08 Sqm
PARKING	
Required Parking	47
Required Parking Ratio / Unit	1.3
Surface Parking	29
Main Floor Parking	17
Barrier Free Parking	4
Total Parking Spaces	48
Total Parking Ratio / Unit	1.33
BUILDING INFO	
Building Footprint	1106.19 sqm.
Storeys	4
Building Height	13m
Max Allowable Height	15m
Construction	Concrete
Total Residential Units	36
REQUIRED VARIANCE	
Variance 1	7.5m wide Driveway Aisle

SCHEMATIC SUMMARY
1/2" = 1'-0"

Disclaimer: This preliminary schematic site plan is based on site information provided by the client, or found on a public domain. This site plan is a graphical representation which approximates the size, configuration and location of features. This plan is not intended to be used for legal descriptions or to calculate exact dimensions or areas. Several yet unknown factors may affect the functionality of this site plan, including existing topography, service easements, soil conditions, etc.

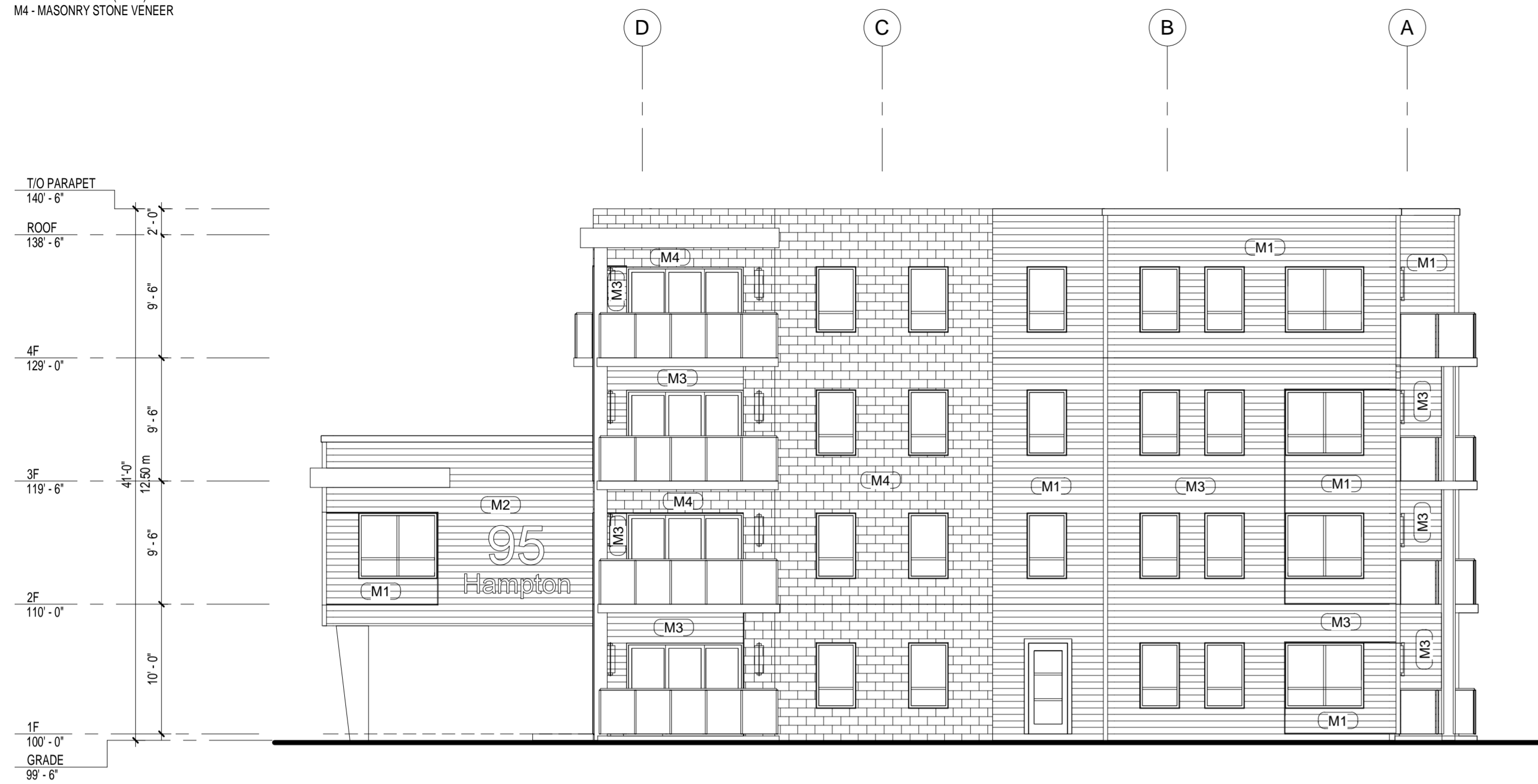


SITE PLAN
3/64" = 1'-0"

MATERIALS:

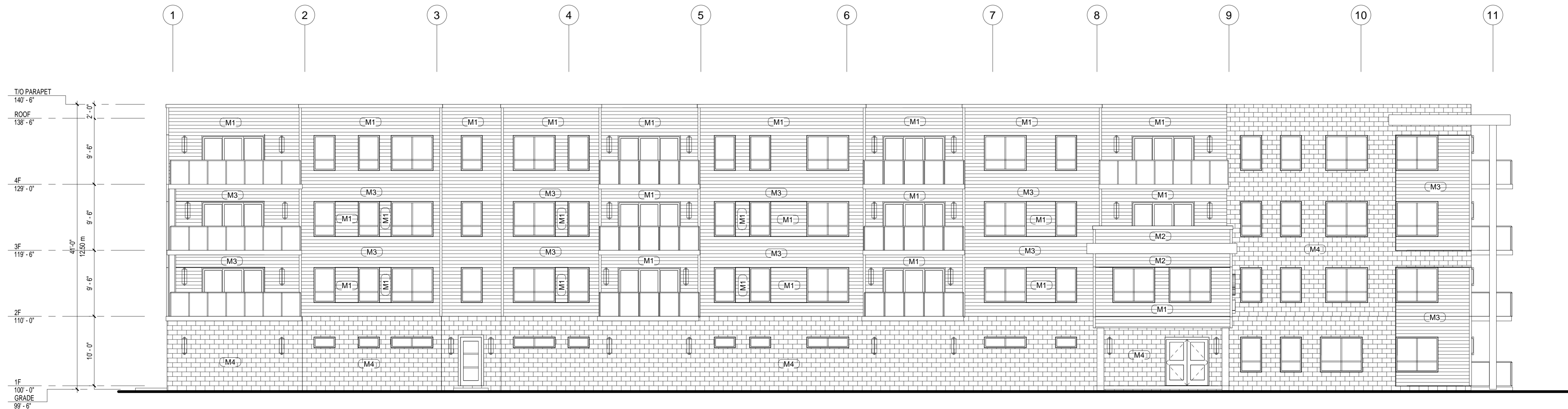
EXACT MATERIAL COLORS AS PER OWNER

- M1 - HORIZONTAL METAL SIDING COLOR 1
- M2 - HORIZONTAL METAL SIDING COLOR 2
- M3 - METAL SIDING (TEAK)
- M4 - MASONRY STONE VENEER



EAST ELEVATION

1/8" = 1'-0"



SOUTH ELEVATION

1/8" = 1'-0"

MATERIALS:

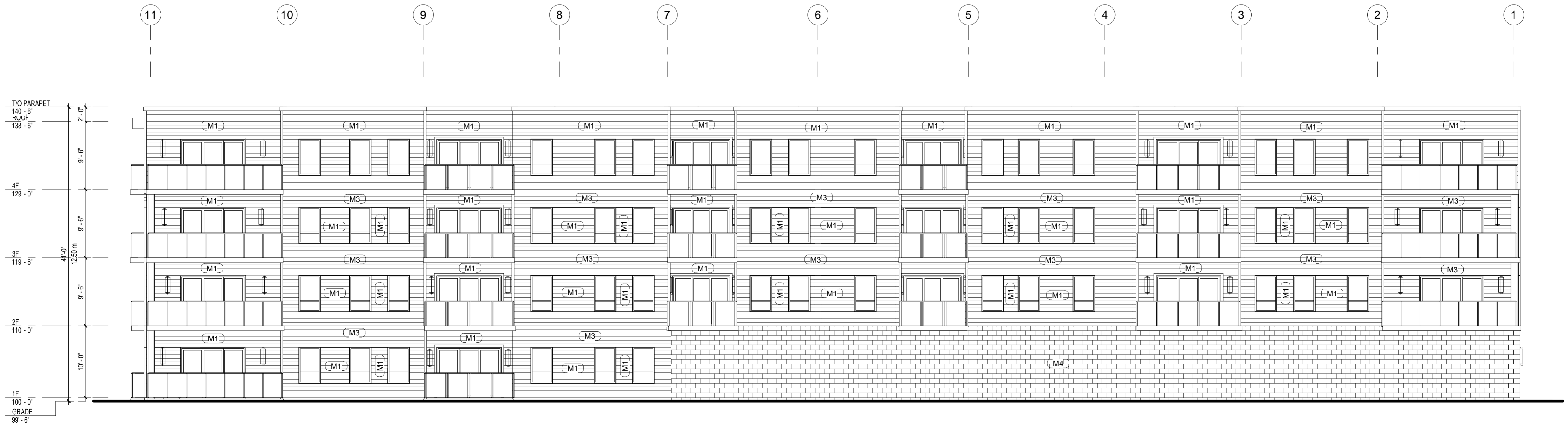
EXACT MATERIAL COLORS AS PER OWNER

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- M2 - HORIZONTAL METAL SIDING COLOR 2
- M3 - METAL SIDING (TEAK)
- M4 - MASONRY STONE VENEER



WEST ELEVATION

1/8" = 1'-0"



NORTH ELEVATION

1/8" = 1'-0"



A - Ornamental grass and shrubs



B - Trees

Form 45

AFFIDAVIT OF CORPORATE EXECUTION

Land Titles Act, S.N.B. 1981, c.L-1.1, s.55

Deponent: Brett Taylor
 1 Magnolia Lane
 PO Box 100
 Rothesay, NB, E2E 3L2

Office Held by Deponent: **Director**

Corporation: KV Properties Ltd.

Place of Execution: Rothesay, Province of New Brunswick.

Date of Execution: _____, 2022

I, BRETT TAYLOR, the deponent, make oath and say:

1. That I hold the office specified above in the corporation specified above, and am authorized to make this affidavit and have personal knowledge of the matters hereinafter deposed to;
2. That the attached instrument was executed by me as the officer(s) duly authorized to execute the instrument on behalf of the corporation;
3. the signature "BRETT TAYLOR" subscribed to the within instrument is the signature of me and is in the proper handwriting of me, this deponent.
4. the Seal affixed to the foregoing indenture is the official seal of the said Corporation was so affixed by order of the Board of Directors of the Corporation to and for the uses and purposes therein expressed and contained;
5. That the instrument was executed at the place and on the date specified above;

DECLARED TO at Rothesay,
 in the County of Kings,)
 and Province of New Brunswick,)
 This ___ day of _____, 2022)

BEFORE ME:)

_____))

Commissioner of Oaths)

_____))
BRETT TAYLOR

Form 45

AFFIDAVIT OF CORPORATE EXECUTION

Land Titles Act, S.N.B. 1981, c.L-1.1, s.55

Deponent: **MARY JANE E. BANKS**

Rothesay
70 Hampton Road
Rothesay, N.B.
E2E 5L5

Office Held by Deponent: Clerk

Corporation: **ROTHESAY**

Other Officer Who Executed the Instrument: **NANCY E. GRANT**

Rothesay
70 Hampton Road
Rothesay, N.B.
E2E 5L5

Office Held by Other Officer Who Executed the Instrument: Mayor

Place of Execution: Rothesay, Province of New Brunswick.

Date of Execution: _____, 2022

I, **MARY JANE E. BANKS**, the deponent, make oath and say:

- 1. That I hold the office specified above in the corporation specified above, and am authorized to make this affidavit and have personal knowledge of the matters hereinafter deposed to;
- 6. That the attached instrument was executed by me and **NANCY E. GRANT**, the other officer specified above, as the officer(s) duly authorized to execute the instrument on behalf of the corporation;
- 7. The signature "**NANCY E. GRANT**" subscribed to the within instrument is the signature of Nancy E. Grant, who is the Mayor of the town of Rothesay, and the signature "**Mary Jane E. Banks**" subscribed to the within instrument as Clerk is the signature of me and is in the proper handwriting of me, this deponent, and was hereto subscribed pursuant to resolution of the Council of the said Town to and for the uses and purposes therein expressed and contained;
- 8. The Seal affixed to the foregoing indenture is the official seal of the said Town and was so affixed by order of the Council of the said Town, to and for the uses and purposes therein expressed and contained;
- 9. That the instrument was executed at the place and on the date specified above;

DECLARED TO at town of
Rothesay, in the County of Kings,)
and Province of New Brunswick,)
This ___ day of _____, 2022)

BEFORE ME:)

Commissioner of Oaths)

MARY JANE E. BANKS