

CITY OF KELOWNA

BYLAW NO. 9883

Heritage Revitalization Agreement Authorization Bylaw HRA07-0001– 763 Bernard Avenue (Muirhead House)

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 Country Cottage Gifts & Décor Ltd for the property located at 763 Bernard Avenue, 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 Country Cottage Gifts & Décor Ltd for the property located at 763 Bernard Avenue Kelowna, B.C., and legally described as:

Lot 15, Block 15, District Lot 138, ODYD, Plan 262

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 day of , 2007.

Considered at a Public Hearing on day of , 2007.

Read a second and third time by the Municipal Council this day of , 2007.

Approved under The Transportation Act this day of , 2007.

(Approving Officer - Ministry of Transportation)

Adopted by the Municipal Council of the City of Kelowna this day of , 2007.

Mayor

City Clerk

SCHEDULE "A"
HERITAGE REVITALIZATION AGREEMENT

DOCUMENT APPROVAL			
Document No. HRA07-0001			
Cir	Department	Date	Init.
	Planning		
	Wrks. & Util.		
	Insp. Serv.		
	City Clerks		

THIS AGREEMENT dated as of the ___ day of _____, 2007

BETWEEN:

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

(herein called the "CITY")

OF THE FIRST PART

AND:

Country Cottage Gifts & Décor Ltd., Inc. No. BC0738041
4170 Seddon Road
Kelowna, B.C., V1W 4C9

(herein called the "OWNER")

OF THE SECOND PART

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 the "Heritage Building", pursuant to the City's Heritage Register, which property and building are located at 763 Bernard Avenue, Kelowna, British Columbia and legally described as:

Parcel Identifier: 006-836-518
Lot 15, Block 15, District Lot 138, ODYD, Plan 262

(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 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 restore, maintain, preserve and protect the heritage character of the buildings located on the Heritage Lands in accordance with attached Schedules “AA”, “BB”, & “CC”.
- 1.2 The parties agree that the Heritage Lands may, notwithstanding the RU6 – Two Dwelling Housing zoning on the Heritage Lands, be used for the following permitted uses:
 - (a) The adaptive reuse of the house as a gift shop provided that:
 - (i) The hours of operation for all enterprises located on the subject property shall take place between 9:00am to 6:00pm, Mondays through Saturdays;
 - (ii) The number of staff operating from the Heritage Building is limited to a maximum of three;
 - (iii) One free standing sign not exceeding 0.23m² (2.5ft²) be permitted in accordance with the “County Cottage Gifts & Décor” sign depicted on Schedule “BB”;
 - (iv) The maximum floor area of the commercial space be limited to 200m²;
 - (v) Six on-site parking stalls shall be provided. Two on-site stalls shall be reserved for customers at all times. Two of the residential on-site parking stalls will be grass crete.
 - (b) Two residential dwelling units, including:
 - (i) The conversion of the basement into a residential suite;
 - (ii) The construction of an accessory building at the rear of the subject property with a secondary suite located above a two car garage.
- 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 and the Heritage Building.
- 1.4 Where a heritage alteration permit is required, the discretion to approve, refuse, or revise such permit is delegated by Council to the Director of Planning and Development Services.

2.0 Conservation and Maintenance of Existing Development.

- 2.1 The owner agrees not to alter the exterior of the Heritage Building except pursuant to a heritage alteration permit issued by the City, and in accordance with this agreement.
- 2.2 The owner agrees to restore the exterior of the Heritage Building on the Heritage Lands in general accordance with the design proposal attached hereto as Schedule “BB”, and forming part of this agreement, the “Restoration Works” shall include, but not be restricted to the following:
- a) The relocation of the existing Heritage Building onto a new foundation;
 - b) Performing cosmetic upgrades to the exterior of the existing Heritage Building.
- 2.3 If original features must be replaced, the new material shall be similar or identical to the original. Where original features were removed through earlier renovations or alterations and the replacements were not in keeping with the original style of the building, any subsequent replacement of these features shall complement the building’s heritage style
- 2.4 The owner, under section 967 of the *Local Government Act*, will designate the property as a Municipal Heritage Building.

3.0 Proposed Development

- 3.1 The Owner agrees to undertake and maintain landscaping on the subject property in general accordance with the landscape plans attached hereto as Schedules “CC” and forming part of this agreement.

(hereinafter called the “Landscaping Works”)

- 3.2 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: 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 in section 4.0 of this agreement.

(hereinafter called the “Works and Utilities Requirements”)

4.0 Works & Utilities Requirements

4.1 Domestic Water and Fire Protection

This property is currently serviced with a small diameter (13-mm) copper water service, which is substandard. The Owner, at his cost, will arrange for the disconnection of the existing service and the installation of a larger (19-mm) water service. Metered water from the fronting building shall be extended by the Owner to supply the suite located in the accessory building.

4.2 Sanitary Sewer

An inspection chamber (IC), must be installed on the service by the Owner and at the Owner’s cost as required by the Sewage System User Bylaw No. 3480. The Owner will be required to sign a Third Party Work Order for the cost of installing the (IC) prior to issuance of a Building Permit.

4.3 Site Related Issues

On-site parking stalls must meet Zoning Bylaw No. 8000 requirements.

The Owner shall ensure that the roof drains shall be directed into on-site rock pits.

The Owner shall provide a designated, lit, unobstructed emergency access path from the frontage road to the main entrance of the proposed suite located in the accessory building.

4.4 Electric Power and Telecommunication Services

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

5.0 Commencement and Completion

5.1 The Owner agrees to commence the Restoration Works, Landscaping Works, and Works and Utilities Requirements forthwith upon adoption of City of Kelowna Heritage Revitalization Agreement Authorization Bylaw No. 9837 and to complete all such Works no later than December 31st, 2009.

6.0 Damage or Destruction

6.1 In the event that no more than 75% of the Heritage Building is damaged, the parties agree as follows:

a) The Owner may repair the Heritage Building 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 Heritage Building is destroyed,

b) 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.

7.0 Breach

7.1 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.

8.0 Amendment

8.1 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*.

9.0 Representations

9.1 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.

10.0 Statutory Functions

10.1 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.

11.0 Enurement

11.1 This Agreement enures to the benefit of and is binding upon the parties hereto and their respective heirs, executors, administrators, successors and assigns.

12.0 Other Documents

12.1 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.

13.0 Notices

13.1 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:

Country Cottage Gifts & Décor Ltd., Inc. No. BC0738041
4170 Seddon Road
Kelowna, B.C., V1W 4C9

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

14.0 No Partnership or Agency

14.1 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

Mayor

City Clerk

Country Cottage Gifts & Décor Ltd., Inc. No. BC0738041
Signed by Duane Habuza

In the presence of:

Witness (print name)

Witness (Signature)

Address

Occupation