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**CITY OF KELOWNA**

**MEMORANDUM**

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**Date:** February 10, 2004  
**File No.:** HRA03-0003

**To:** City Manager

**From:** Planning and Corporate Services Department

**Subject:**

**APPLICATION NO.** HRA03-0003  
**AT:** 2124 Pandosy Street

**OWNER:** Oak Lodge Centre Ltd.  
**APPLICANT:** Wayne Ross

**PURPOSE:** THE APPLICANTS ARE SEEKING A HERITAGE REVITALIZATION AGREEMENT TO PERMIT THE ADAPTIVE RE-USE OF A RESIDENTIAL HERITAGE BUILDING FOR 5 RESIDENTIAL DWELLING UNITS

**REPORT PREPARED BY:** RYAN SMITH

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**SEE ATTACHED FACT SHEET FOR COMPLETE APPLICATION DETAILS**

**1.0** RECOMMENDATION

THAT Council authorize by bylaw the City of Kelowna to enter into a Heritage Revitalization Agreement for Lot 3, District Lot 14, ODYD Plan 4551, located at 2124 Pandosy Street, in the form of such agreement attached to and forming part of this bylaw as "Schedule A";

AND THAT the Heritage Revitalisation Agreement be forwarded to a Public Hearing;

AND THAT final adoption of the Heritage Revitalization Agreement bylaw be considered subsequent to the requirements of the Works & Utilities Department and Inspection Services Department being completed to their satisfaction;

AND THAT final adoption of the Heritage Revitalization Agreement bylaw be considered subsequent to heritage designation of the property under Section 967 of the Local Government Act.

**2.0** SUMMARY

The Oak Lodge Rest Home is a care facility for the mentally disabled which currently operates as a legally non-conforming use on the subject property. The applicants are seeking Council approval of a heritage revitalization agreement which would permit an adaptive re-use and a restoration/renovation of the existing single family house (which houses a lodging house) and accessory building on the

subject property. The applicants are intending to renovate the interior of the existing single family dwelling to create four dwelling units. A fifth unit is also proposed for an accessory building at the rear of the property. The applicant would also like to preserve the possibility of adding two additional units in the basement at a later date.

### 3.0 COMMUNITY HERITAGE COMMISSION

At the regular meeting of December 2, 2003 it was resolved:

THAT the Community Heritage Commission support Heritage Revitalization Agreement Application HRA03-0003 -2124 Pandosy Street.

### 4.0 ADVISORY PLANNING COMMISSION

At the regular meeting of January 19, 2004 it was resolved:

THAT the Advisory Planning Commission supports Heritage Revitalization Agreement Application No. HRA03-0003, for 2124 Pandosy Street, Lot 3, Plan 4551, Sec.24, Twp.25, ODYD, by Oak Lodge Centre Ltd (Wayne Ross), to renovate the interior of the existing single family dwelling to create four dwelling units with a fifth unit proposed for the existing accessory building at the rear of the property, subject to no variances being permitted.

### 5.0 BACKGROUND

Known as the Cadder House, this was once the largest residence in Kelowna (at the time of its construction in 1908).

The Cadder house was built by T.W. Stirling, who was among the largest investors in early Kelowna. Thomas Willing Stirling (1866-1930) came to area in 1894 and established "Bankhead" Orchard, specialising in pears. He returned to Britain during World War 1 to serve in the Navy, reaching rank of Commander. He returned to Kelowna in 1919, and later returned to Scotland in 1921 after inheriting family property. The house was used as nurses' residence from 1922-24 and in 1964 was set up as a senior citizens' facility known as the "Oak Lodge Rest Home".

Cadder House is modelled on a historical country house. It has a prominent central porch under the cross gable, and a simple, classically-inspired, symmetrical front elevation. A small square bay projects off of the right hand side of the building. The front porch has been closed in to form a sunroom.

The Heritage Register notes the unusual and attractive cross-gabled design of the roof and denotes the use of the local rusticated block (Haug brand) for the first storey of the house and then wood frame above is not very common.

#### 5.1 Proposal

The Oak Lodge Rest Home is a care facility for the mentally handicapped which currently operates as a legally non-conforming use on the subject property. The applicants are seeking Council approval of a heritage revitalization agreement which would permit an adaptive re-use and a restoration/renovation of the existing single family house and accessory building on the subject property.

The applicants are intending to renovate the interior of the existing single family dwelling to create four dwelling units. A fifth unit is also proposed for an accessory building at the rear of the property. Two dwelling units will be located on the main level of Cadder house and two will be located on the second storey. The existing basement will be used a storage for the tenants/owners for the near future, however the applicant would like to have the option of adding two additional units in the basement at some point in the future.

On the exterior of the house the applicant is planning the following restoration work:

- Replace existing roof with a new one that resembles the original in colour
- Remove stucco to expose shingle siding (repair and replace shingles where necessary)
- Sandblast masonry to remove paint and reseal with transparent protectant
- Re-tool joints and cracks as necessary after sandblasting
- Replace fascias where modified (not original) and repair as necessary
- New porch guardrail and stair handrail as per original design
- New lattice below front
- New planters at base of front steps
- Demolish both offices and revert back to original porch layout

The existing accessory building will also be modified to accommodate a small dwelling unit. The exterior will also be refurbished with the following:

- New roof
- Cream/beige cedar siding (remove stucco)
- Dark brown windows, doors and casings
- Dark brown fascia trim

The plan originally submitted by the applicant required several variances pertaining to the setback of the accessory building and the setback of 9 parking stalls. The applicant has since revised the proposal in order to eliminate the need for any variances.

The applicants have indicated that in conjunction with this application they will designate 2124 Pandosy Street as a heritage property under Section 967 of the Local Government Act.

The application compares to the requirements the City of Kelowna Zoning Bylaw No. 8000 for RU1 zones as follows:

CRITERIA	PROPOSAL	RU1 REQUIREMENTS
Lot Size (m <sup>2</sup> )	2566m <sup>2</sup>	550m <sup>2</sup>
Lot Width	42.37m	16.5m
Lot Depth	60.36m	30.0m
Site Coverage (%) (Buildings)	10.2%	40%
Site Coverage (%) (Including Parking)	28% (approx.)	50%
Parking	9 stalls	9 stalls
Building Setbacks		
Front Yard	24.3m	4.5m
Side Yard (N)	19.9m	2.3m
Side Yard (S)	7.4m	2.3m
Rear Yard	14.9m	7.5m
Accessory Building Setbacks		
Side Yard (N)	16.7m	2.3m
Side Yard (S)	18.2m	2.3m
Rear Yard	1.5m	1.5m
Building Size		
Building Area (House)	690m <sup>2</sup> (existing)	
Building Area (Accessory Buiding)	51m <sup>2</sup> (existing)	
Unit 1 size	86.2m <sup>2</sup>	
Unit 2 size	71m <sup>2</sup>	
Unit 3 size	111m <sup>2</sup>	
Unit 4 size	75m <sup>2</sup>	
Unit 5 size	51.6m <sup>2</sup>	

## 5.2 Site Context

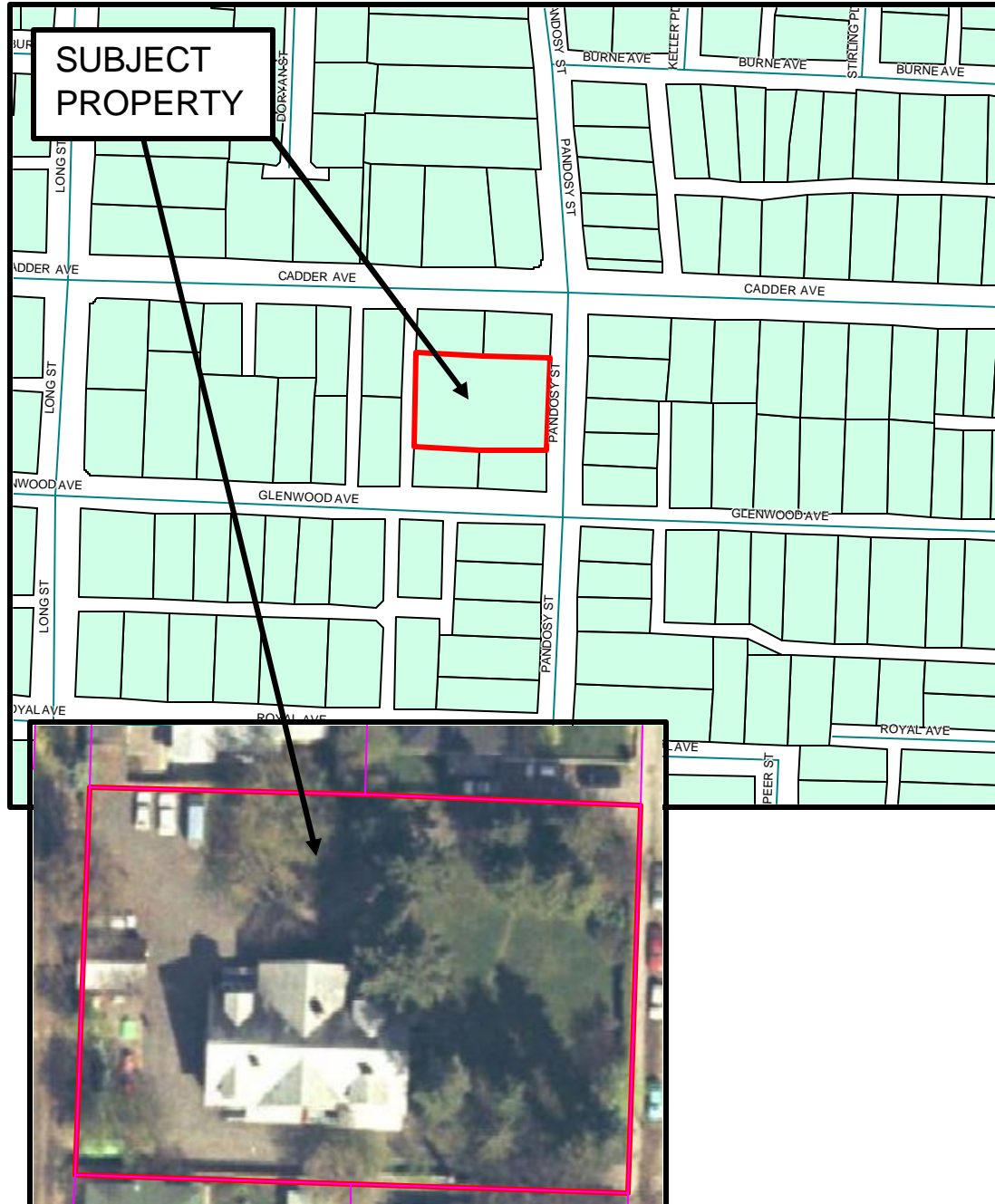
The subject property is located in Abbott Street Heritage Conservation Area, which is included in the Central City Sector Plan. The property lies on the western side of Pandosy Street between Cadder Avenue and Glenwood Avenue.

Adjacent zones and uses are, to the:

- North - RU1 – Large Lot Housing – Single Family Dwelling
- East - RU6 – Two Dwelling Housing – Single Family Dwelling
- South - RU1 – Large Lot Housing – Single Family Dwelling
- West - RU1 – Large Lot Housing – Single Family Dwelling

### 5.3 Site Location Map

Subject Property: 2124 Pandosy Street



## 6.0 CURRENT DEVELOPMENT POLICY

### 6.1 Kelowna Official Community Plan

The subject property is designated single/two unit residential by Kelowna's Official Community Plan. The Single/Two Family Residential designation covers single detached homes, single detached homes with a secondary suite, semi-detached buildings used for two dwelling units, and complementary uses (OCP, Chapter 8). The OCP also encourages a focus towards achieving more efficient use of land within single-detached neighbourhoods and supports land use approaches where residential densities increase as proximity to the core of Urban Centres increases.

The Kelowna Official Community Plan recommends the use of Heritage Revitalization Agreements, on a site-specific basis, to allow for the adaptive re-use and continuing protection of heritage properties. To assist City Council, staff and the public when considering proposals for the adaptive re-use of residential heritage buildings, Council adopted a resolution in May of 2003 to endorse guidelines for the adaptive re-use of residential heritage buildings listed in the Kelowna Heritage Register.

The proposed land use and the terms and conditions of the proposed HRA are consistent with the direction of this policy document. In this regard, the proposal allows for more efficient use of the subject property while at the same time rehabilitating the existing building which is listed in the Kelowna Heritage Register.

### 6.2 City of Kelowna Strategic Plan (1992)

The City of Kelowna Strategic Plan encourages the preservation of important heritage buildings and areas within the city (Objective 1.6). The Strategic Plan also encourages the development of a more compact urban form by increasing densities through infill and re-development within existing urban areas and providing for higher densities within future urban areas (Objective 1.1). The proposal is consistent with these objectives.

### 6.3 Abbott Street and Marshall Heritage Conservation Area Development Guidelines (1997)

The purpose of these guidelines is to maintain the existing single or two family residential and historical character of the Abbott Street and Marshall Street Heritage Conservation Areas. They encourage new development or additions to existing development, which are compatible with the form and character of the existing context, and advocate retention and renovation of existing development.

#### 6.4 Heritage Register

Known as the Cadder House, this was once the largest residence in Kelowna (at the time of its construction in 1908).

The Cadder house was built by T.W. Stirling, who was among the largest investors in early Kelowna. Thomas Willing Stirling (1866-1930) came to area in 1894 and established "Bankhead" Orchard, specialising in pears. He returned to Britain during World War 1 to serve in the Navy, reaching rank of Commander. He returned to Kelowna in 1919, and later returned to Scotland in 1921 after inheriting family property. The house was used as nurses' residence from 1922-24 and in 1964 was set up as a senior citizens' facility known as the "Oak Lodge Rest Home".

Cadder House is modelled on a historical country house. It has a prominent central porch under the cross gable, and a simple, classically-inspired, symmetrical front elevation. A small square bay projects off of the right hand side of the building. The front porch has been closed in to form a sunroom.

The Heritage Register notes the unusual and attractive cross-gabled design of the roof and denotes the use of the local rusticated block (Haug brand) for the first storey of the house and then wood frame above is not very common.

#### 6.5 Adaptive Re-Use Guidelines for Heritage Buildings

Objectives:

- To conserve Kelowna's residential heritage buildings listed in the Kelowna Heritage Register by enhancing their appearance and viability as functional buildings;
- To retain the desirable qualities of older residential neighbourhoods such as heritage houses, mature landscaping and pedestrian oriented street environments;
- To favourably consider Heritage Revitalization Agreement applications for a limited range of uses as a means of achieving the adaptive re-use of heritage buildings which, at the same time, would preserve the prevailing character of neighbourhoods by limiting impacts such as high amount of traffic, noise, smell etc. or which may have hours of operation which extend into the evening hours;
- To ensure that allowing adaptive re-uses within heritage buildings does not have a negative impact on the viability of existing commercial areas within Urban Centres.

## 7.0 TECHNICAL COMMENTS

This application was circulated to various internal departments and technical agencies and the following comments were received:

### 7.1 Works and Utilities Department

#### **7.1.1 Domestic Water and Fire Protection**

- (a) This parcel is serviced with a 19mm copper domestic water service. A new water service of sufficient size to supply the domestic and fire protection requirements of the proposed development must be installed at the applicant's cost.
- (b) The disconnection and removal of the existing small diameter water service and the tie-in of the new service will be by City forces at the developer's expense.
- (c) A water meter must be installed inside the building on the water service inlet as required by the City Plumbing Regulation and Water Regulation bylaws. The developer or building contractor must purchase the meter from the City at the time of application for a building permit from the Inspection Services Department, and prepare the meter setter at his cost. The developer must also purchase an irrigation sewer credit meter from the City and prepare a meter setter at his cost.

#### **7.1.2 Sanitary Sewer**

- (a) There is an existing 100mm-diameter sanitary sewer service to the proposed facility that may be retained. If a larger service is required it can be provided at the applicant's cost.

#### **7.1.3 Storm Drainage**

- (a) There is no existing storm drainage service for this lot.

#### **7.1.4 Road Improvements**

- (a) Pandosy Street has been upgraded to the ultimate curb alignment. Frontage improvements including a new sidewalk were completed. No further upgrades are required at this time.
- (b) The rear lane fronting the development site must be upgraded to a paved standard including a drainage system. The cost of this work for bonding purposes is \$14,000.00.



### **7.1.5 Road Dedication and Subdivision Requirements**

By registered plan to provide the following:

- (a) Road Reserve 3.20 meter widening of Pandosy Street fronting this property.
- (b) Grant statutory right-of-way(s) if required for utility services.

### **7.1.6 Electric Power and Telecommunication Services**

It is the developer'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 applicant's cost.

### **7.1.7 Geotechnical Report**

Not required for building renovation purposes.

### **7.1.8 Survey Monuments and Iron Pins**

If any legal survey monuments or property iron pins are removed or disturbed during construction, the developer will be invoiced a flat sum of \$1,200.00 per incident to cover the cost of replacement and legal registration. Security bonding will not be released until restitution is made.

### **7.1.9 Site Related Issues**

- (a) The development will be required to contain and dispose of site generated storm water on the site by installing a ground recharge system consisting of drywells and perforated pipe bedded in drain rock.
- (b) Direct the carriage house roof drain splash pads away from the rear lane or into an on-site rock pit. This will help dissipate the roof drain water and prevent additional concentrated flow onto the lane.

## **7.2 Inspection Services**

- a) Variance required for the siting of the carriage house.
- b) What are plans for the basement?
- c) Floors and walls shall be upgraded to 3/4 hr. fire resistant rating. Doors shall be solid core with a 20 min. rating.
- d) Unit #1 will require access from the deck to the ground.
- e) A door solid core door shall be installed at the top of the stair on the second floor complete with a landing.

f) The exterior exit stair from the 2nd floor may be exposed to fire from unit #2. Protection must be provided.

g) A smoke alarm system shall be installed.

**\*Note:** Variance is no longer required for siting of proposed carriage house. Applicant has revised the plans and will be moving the existing carriage house to meet the required setback. The applicants have indicated that the sole use of the basement will be storage at this time.

### 7.3 Fire Department

It is assumed that fire alarm system will remain intact and in fact be upgraded if required.

### 7.4 Shaw Cable

Owner/developer to supply and install an underground conduit system per Shaw Cable drawings and specifications.

### 7.5 Telus

TELUS will provide underground facilities to this development. Developer will be required to supply and install conduit as per TELUS policy.

## 8.0 PLANNING AND CORPORATE SERVICES DEPARTMENT

The Planning and Corporate Services Department is supportive of the proposed renovation and adaptive re-use of the Cadder House at 2124 Pandosy Street. The proposal is generally consistent with the Official Community Plan and more specifically the Adaptive Re-Use Guidelines for Heritage Buildings and the Abbott Street Heritage Conservation Area Guidelines.

Considering the size of the subject property and size of the existing house, staff feel that the proposed adaptive re-use will complement the neighbourhood and will also help to restore the existing house to a condition more closely resembling the original structure built in 1908. Staff is also pleased that the applicant supports the heritage designation of the subject property under Section 967 of the Local Government Act.

In addition, staff had discussed with the applicant, the possibility of adding two additional units in the basement. The applicant has since discarded this option; however, it should be noted that staff has no concerns with this option should the applicant provide the required parking and address any building code related issues. If the applicant chooses to explore this possibility in the future, a new application will be required to amend the Heritage Revitalization Agreement by bylaw.

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Andrew Bruce  
Manager of Development Services

Approved for inclusion ☐

R.L. (Ron) Mattiussi, ACP, MCIP  
Director of Planning & Corporate Services

RM/AB/rws  
Attach.

### **FACT SHEET**

- |   |  |
|---|--|
| 1. APPLICATION NO.:   | HRA03-0003   |
| 2. APPLICATION TYPE:  | Heritage Revitalization Agreement  |
| 3. OWNER:<br>· ADDRESS<br>· CITY<br>· POSTAL CODE   | Oak Lodge Centre Ltd. (Wayne Ross)<br>2124 Pandosy Street<br>Kelowna, BC<br>V1Y 1S6  |
| 4. APPLICANT/CONTACT PERSON:<br>· ADDRESS<br>· CITY<br>· POSTAL CODE<br>· TELEPHONE/FAX NO.:  | Oak Lodge Centre Ltd. (Wayne Ross)<br>2124 Pandosy Street<br>Kelowna, BC<br>V1Y 1S6<br>712-3100  |
| 5. APPLICATION PROGRESS:<br>Date of Application:<br>Date Application Complete:<br>Servicing Agreement Forwarded to Applicant:<br>Servicing Agreement Concluded:<br>Staff Report to APC/CHC: | November 24, 2003<br>November 24, 2003<br>N/A<br>N/A<br>November 27, 2003  |
| 6. LEGAL DESCRIPTION:   | Lot 3, District Lot 14, ODYD Plan 4551   |
| 7. SITE LOCATION:   | The subject property is located on the west side of Pandosy Street between Cadder Avenue and Glenwood Avenue.  |
| 8. CIVIC ADDRESS:   | 2124 Pandosy Street  |
| 9. AREA OF SUBJECT PROPERTY:  | 2566m <sup>2</sup>   |
| 10. EXISTING ZONE CATEGORY:   | RU1 – Large Lot Housing  |
| 11. PURPOSE OF THE APPLICATION:   | THE APPLICANTS ARE SEEKING A HERITAGE REVITALIZATION AGREEMENT TO PERMIT THE ADAPTIVE RE-USE OF A RESIDENTIAL HERITAGE BUILDING FOR 5-7 RESIDENTIAL DWELLING UNITS |
| 12. MIN. OF TRANS./HIGHWAYS FILES NO.:<br>NOTE: IF LANDS ARE WITHIN 800 m OF A CONTROLLED ACCESS HIGHWAY  | N/A  |
| 13. DEVELOPMENT PERMIT MAP 13.2 IMPLICATIONS  | N/A  |

**ATTACHMENTS**

**(not attached to the electronic version of the report)**

- Location of subject property
- Site plan
- Landscape Plan
- Elevations
- Colour Rendering
- Floor Plans (existing and proposed)

# **SCHEDULE "A"**

## **HERITAGE REVITALIZATION AGREEMENT**

DOCUMENT APPROVAL			
Document No. HRA03-0003			
Cir	Department	Date	Init.
	Planning		
	Wrks. & Util.		
	Insp. Serv.		
	City Clerks		

THIS AGREEMENT dated as of the     day of     , 200   .

BETWEEN:

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

(herein called the "CITY")

AND:

Oak Lodge Centre Ltd  
2175 Abbott Street  
Kelowna, BC, V1Y 1C9

(herein called 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 City's Heritage Register, which property and building are located at 2124 Pandosy Street, Kelowna, British Columbia and legally described as:

Parcel Identifier: 010-529-063  
Lot 3, Section 24, Township 25, ODYD Plan 4551

(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 has 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 "A", "B", and "C".

1.2 The parties agree that the Heritage Lands may, notwithstanding the RU1 – Large Lot Housing zoning on the Heritage Lands, be used for the following permitted uses within the Heritage Building on the identified Heritage Lands:

- (a) Five residential units as shown in Schedule "A";
- (b) The residential units will be limited to the following sizes:

Unit 1: 86.2m<sup>2</sup>

Unit 2: 71m<sup>2</sup>

Unit 3: 111m<sup>2</sup>

Unit 4: 75m<sup>2</sup>

Unit 5: 51.6m<sup>2</sup>

- (c) No dwelling units shall be developed in the existing basement area without an application to amend this agreement.
- (d) The owner agrees to the designation of the property under Section 967 of the Local Government Act has a Heritage Property

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.

**2.0 Proposed Development**

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

(herein after called the "Landscaping Works")

- 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: 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 - "Works and Utilities Requirements", and forming part of this agreement.

(herein after called the "Works and Utilities Requirements")

3.0 **Works & Utilities Requirements**

3.1. **Domestic Water and Fire Protection**

- (b) A new water service of sufficient size to supply the domestic and fire protection requirements of the proposed development must be installed at the owner's expense.
- (b) The disconnection and removal of the existing small diameter water service and the tie-in of the new service will be by City forces at the owner's expense.
- (c) A water meter must be installed inside the buildings on the water service inlet as required by the City Plumbing Regulation and Water Regulation bylaws. The owner or its building contractor must purchase the meter from the City at the time of application for a building permit from the Inspection Services Department, and prepare the meter setter at his cost. The developer must also purchase an irrigation sewer credit meter from the City and prepare a meter setter at his cost.

3.2 Sanitary Sewer

- (b) If a larger service is required it can be provided at the owner's cost.

3.3 Road Improvements

- (c) The rear lane fronting the heritage lands must be upgraded to a paved standard including a drainage system at the owner's expense. Owner is required to provide bonding in a form acceptable to the City of Kelowna in the amount of \$14,000.00.

3.4 Road Dedication and Subdivision Requirements

The owner must provide by registered plan the following:

- (b) A Road Reserve allowing for 3.20 meter widening of Pandosy Street fronting this property.
- (b) Statutory rights-of-way as required for utility services.

3.5 Electric Power and Telecommunication Services

The owner shall be responsible to make a servicing application with the respective electric power, telephone and cable transmission companies to arrange for service upgrades to these services at the owner's expense.

3.6 Survey Monuments and Iron Pins



If any legal survey monuments or property iron pins are removed or disturbed during construction, the owner will pay to the City a flat sum of \$1,200.00 per incident to cover the cost of replacement and legal registration.

**3.7 Site Related Issues**

- (c) The heritage lands will be required to contain and dispose of site generated storm water on the site by installing a ground recharge system consisting of drywells and perforated pipe bedded in drain rock.
- (d) The owner will direct the carriage house roof drain splash pads away from the rear lane or into an on-site rock pit in order to help dissipate the roof drain water and prevent additional concentrated flow onto the lane.

**4.0 Inspection Services Requirements**

4.1 The Owner shall provide and pay for all structural upgrades required for the proposed adaptive re-use of the subject Heritage House to meet the British Columbia Building Code as outlined in this agreement including the following:

- a) Floors and walls shall be upgraded to 3/4 hr. fire resistant rating. Doors shall be solid core with a 20 min. fire resistant rating.
- b) Unit #1 shall have access from the deck to the ground.
- c) A solid core door shall be installed at the top of the stair on the second floor complete with a landing.
- d) The exterior exit stair from the second floor may be exposed to fire from unit #2. The owner shall resolve this issue to the satisfaction of the Inspection Services.
- e) A smoke alarm system shall be installed.

**5.0 Commencement and Completion**

5.1 The Owner agrees to commence the Restoration Works, Landscaping Works, and Works and Utilities requirements and Inspection Services requirements forthwith upon adoption of City of Kelowna Heritage Revitalization Agreement Authorization Bylaw No. \_\_\_\_\_ and to complete all such Works no later than December 31<sup>st</sup>, 2004.

**6.0 Damage or Destruction**

6.1 In the event that 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 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.

## **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.

**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:

Oak Lodge Centre Ltd  
2175 Abbott Street  
Kelowna, BC, V1Y 1C9

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

\_\_\_\_\_  
(Mayor)

\_\_\_\_\_  
(City Clerk)

Oak Lodge Centre Ltd. Inc. No.170825 (Myrna White)

In the presence of:

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

\_\_\_\_\_  
Oak Lodge Centre Ltd. Inc. No.170825 (Myrna White)

\_\_\_\_\_  
Address

\_\_\_\_\_  
Occupation

