
CITY OF KELOWNA

MEMORANDUM

Date: May 12, 2004
File No.: HRA04-0001

To: City Manager

From: Planning and Corporate Services Department

Subject:

APPLICATION NO. HRA04-0001
AT: 710 Sutherland Avenue

OWNER: 457539 BC Ltd. (AssuredSoftware)
APPLICANT: Paul Winkers

PURPOSE: THE APPLICANTS ARE SEEKING A HERITAGE REVITALIZATION AGREEMENT TO PERMIT THE ADAPTIVE RE-USE OF A RESIDENTIAL HERITAGE BUILDING FOR A HIGH TECH PRODUCT DESIGN COMMERCIAL USE

REPORT PREPARED BY: RYAN SMITH

SEE ATTACHED FACT SHEET FOR COMPLETE APPLICATION DETAILS

1.0 RECOMMENDATION

THAT Council not consider a bylaw which would authorize the City of Kelowna to enter into a Heritage Revitalization Agreement for the property Lot 1, District Lot 138, ODYD Plan 38712 , located on Sutherland Avenue, Kelowna, B.C., in the form of such agreement attached to the report from the Planning & Development Services Department dated as "Schedule A".

2.0 SUMMARY

The applicants are seeking a heritage revitalization agreement to permit the adaptive re-use of the single family dwelling located at 710 Sutherland Avenue for a high-tech commercial use. This building is currently listed on the Kelowna Heritage Register as having heritage value.

3.0 COMMUNITY HERITAGE COMMISSION

At the regular meeting of April 6, 2003 it was resolved

THAT the Community Heritage Commission not support Heritage Application No. HRA04-0001, 710 Sutherland Avenue/Lot 1, Plan 38712, Sec. 19, Twp. 26, ODYD, by 457539 BC Ltd. (Paul Winkers) and recommend that the applicant address the following issues before submitting a revised application:

- *a residential component be added to preserve the current residential character of the neighbourhood;*
- *an application be made for designation as a Municipal Heritage Site pursuant to Section 967 of the Local Government Act;*
- *off-site parking details be clarified and a detailed plan provided;*
- *detailed information be provided regarding any exterior signage plans;*

The applicant has since provided the following information:

- A residential component was considered but will not be added.
- The applicant has elected not to designate the property as a Municipal Heritage site under Section 976 of the Local Government Act.
- the applicant has provided details with regard to off-site parking. Four stalls will be rented from the church on the west side of Richter Street and two additional stalls will be available on an adjacent residential property. It must be noted that agreements made by the applicant to secure parking are not permanent in nature.
- The applicant has indicated that there are no plans for exterior signage.

4.0 ADVISORY PLANNING COMMISSION

At the regular meeting of March 30, 2003 it was resolved:

THAT the Advisory Planning Commission supports Heritage Application No. HRA04-0001, 710 Sutherland Avenue/Lot 1, Plan 38712, Sec. 19, Twp. 26, ODYD, by 457539 BC Ltd. (Paul Winckers), to enter into a Heritage Revitalization Agreement with the City of Kelowna in order to allow an Office/High Technology Research and Product Design use on a RU1 - Large Lot Housing zoned lot listed in the Kelowna Heritage Register, subject to resolution of the parking requirement being completed to the satisfaction of the Planning & Corporate Services Department.

5.0 BACKGROUND

Long associated with George Anderson who ran a well-established automotive business the N.D. McTavish House was built by, and presumably occupied by N.D. McTavish, who played an important role in the residential development of the city during its 1st civic phase.

The house was built in 1912 by N.D. McTavish who was both realtor and developer. It was bought by George Anderson, who first appears in the directories as a "vulcanizer" for A.J. Smith Garage in 1922. In 1924 he bought Jim Brown's Oil Shop and operated it until 1945 as Anderson's Tire Shop. Anderson owned the house at least until 1959, but rented it out. The occupant in 1948 and 1956 was George W. Sutherland, managing director of Kelowna Furniture Co. Ltd.

Today the house remains a well-preserved and well-maintained hipped cottage in the craftsman style. The house was moved on the lot in 1984. The heritage register does not list a reason for the move.

The form of the N.D. MaTavish House is a hipped cottage, with Arts and Crafts character and porch anticipating the bungalow style. The front entrance porch on the left hand corner of the house displays a hipped roof with large square posts. Bay windows dominate the right hand side of the composition. Other details include brackets under the eaves and a double-door rear entrance.

5.1 Proposal

The applicant would like to house a software company on the subject property which he co-owns. The company known as Assured Software develops and sells software to restoration contractors and insurance companies. The company is comprised of 11 individuals living and working in Kelowna and four contract trainers living elsewhere in North America. The company's eleven employees include the company's 5 owners, 4 software developers, two support personnel, two sales and marketing personnel, one accountant and two administrative assistants. The applicant reports that in just two years the company's North American client base has grown to over 400.

The applicants are attracted to the Sutherland location because of the location within the City of Kelowna and more broadly its location in the Okanagan Valley. The applicants feel that as a busy intersection, this property is not well-suited as a residential property.

The applicant has indicated the commitment of the company to maintaining and improving the existing form and character of the heritage building and nurture the mature landscaping that exists on-site.

The applicant is proposing to locate two offices on the top floor to house the support team; five offices on the main floor to house the sales and administration team, and four offices (and meeting room) in the basement to house the development team. The applicant has indicated that the office layout does not stress the existing floor plan of the house and therefore no alterations have been required.

Two parking stalls (that conform to the zoning bylaw) can be accommodated on-site for employees and at least 6 additional stalls have been secured by way of agreement with the Cathedral Church of St. Michael and an adjacent property owner. The applicants have indicated that visitor parking is not required as the business seldom has clients visit the office. It should be noted that the off site parking arrangements are not permanent but only a monthly arrangement.

The applicant is not considering the designation of this house under provision of the Local Government Act at this time.

The application compares to the requirements the City of Kelowna Zoning Bylaw No. 8000 for RU6 zones as follows:

CRITERIA	PROPOSAL	RU6 REQUIREMENTS
Lot Size (m ²)	589m ²	400m ²
Lot Width	19.50	13.0m
Lot Depth	24.51	30.0m
Site Coverage (%) (Buildings)	32%	40%
Site Coverage (%) (Including Parking)	47%	50%
Parking	8 stalls (2 Stalls on-site) (6 Stalls located on adjacent sites)	Offices: 2.5 per 100m ² GFA → 268m ² x 0.025=7stalls
Building Setbacks		
Front Yard	8.0m	4.5m
Side Yard (e)	2.6m	2.3m
Side Yard (w)	5.3m	4.5m (flanking side yard)
Rear Yard	5.5m	7.5m (legally non-conforming)

5.2 Site Context

The subject property is located on the corner of Sutherland Avenue and Richter Street. Cathedral Church is located across the street and an apartment building is located to the south west. The house is typical of others in the immediate area.

Adjacent zones and uses are, to the:

- North - RU6 – Two Dwelling Housing – Single Family Dwelling
- East - RU6 – Two Dwelling Housing – Single Family Dwelling
- South - RU1 – Large Lot Housing – Single Family Dwelling
- West - P2 – Education and Minor Institutional

5.3 Site Location Map

Subject Property: 710 Sutherland Avenue



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 Heritage Register

Long association with George Anderson who ran a well-established automotive business the N.D. McTavish House was built by, and presumably occupied by N.D. McTavish, who played an important role in the residential development of the city during its 1st civic phase.

The house was built in 1912 by N.D. McTavish who was both realtor and developer. It was bought by George Anderson, who first appears in the directories as a "vulcanizer" for A.J. Smith Garage in 1922. In 1924 he bought Jim Brown's Oil Shop and operated it until 1945 as Anderson's Tire Shop. Anderson owned the house at least until

1959, but rented it out. The occupant in 1948 and 1956 was George W. Sutherland, managing director of Kelowna Furniture Co. Ltd.

Today the house remains a well-preserved and well-maintained hipped cottage in the craftsman style. The house was moved on the lot in 1984. The heritage register does not list a reason for the move.

The form of the N.D. MaTavish House is a hipped cottage, with Arts and Crafts character and porch anticipating the bungalow style. The front entrance porch on the left hand corner of the house displays a hipped roof with large square posts. Bay windows dominate the right hand side of the composition. Other details include brackets under the eaves and a double-door rear entrance.

6.4 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, small 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.
- A residential component (group home, secondary suite, principal dwelling, etc.) should be provided in conjunction with a non-residential use in order to minimize impacts on the residential character of a neighbourhood. For security purposes, incorporating a residential component is particularly important where a high concentration of adaptive reuses occurs along a particular block.

7.0 TECHNICAL COMMENTS

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

7.1 Inspection Services Department

No objection.

7.2 Works and Utilities Department

7.2.1 **Domestic Water and Fire Protection**

This parcel is serviced with a 19mm copper domestic water service that may be retained if it is of sufficient size. Service changes, if required, will be at the applicant's cost.

7.2.2 **Sanitary Sewer**

There is an existing 100mm-diameter sanitary sewer service to the proposed facility that may be retained.

7.2.3 **Storm Drainage**

It will be necessary for the applicant to install a storm drainage collection system in Sutherland Avenue fronting on this property. The cost of these works is included in the road upgrading cost estimates

There is no storm drainage service for this lot.

7.2.4 **Road Improvements**

Richter Street has been fully urbanized and no further upgrades are required at this time.

Sutherland Avenue fronting this property must be upgraded to a modified (separate sidewalk) collector class 1 standard (SS-R5) including concrete curb and gutter, storm drainage system, fillet pavement, underground irrigation system, and re-location or adjustment of existing utility appurtenances if required to accommodate the upgrading construction. The estimated cost of this construction for bonding purposes, not including the cost of installing a piped storm drainage system, is \$3,500.00

A one-time cash payment will be required for the future construction of the piped storm system fronting the property which will be performed by the city at the city's schedule,

using the collected funds. The cash-in-lieu amount is determined to be \$4,250.00.

7.2.5 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.

7.2.6 Geotechnical Report

Not required for building renovation purposes.

7.2.7 Bonding and Levy Summary

(a) Bonding

Road frontage improvements on Sutherland Ave. \$3,500.00.

(b) Cash Levy

Sutherland Avenue piped storm system.
One-time cash payment \$4,250.00

7.2.8 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.

7.2.9 Site Related Issues

The Heritage Revitalization Agreement Application does not compromise Works and Utilities requirements.

7.2.10 Administration Charge

An administration charge is applicable to this development in the amount of 3% (+ GST) of the total off-site servicing costs. The administration charge will be assessed and must be paid prior to release of any security deposits.

7.3 Fire Department

No comment.

7.4 **Telus/Shaw Cable/Aquila/Terasen/Public Health Inspector**

No comment.

7.5 **Bylaw Enforcement Officer**

No comment.

8.0 **PLANNING AND CORPORATE SERVICES DEPARTMENT**

The applicant is currently operating the proposed use illegally on the subject property. This was brought to the attention of staff when the applicant applied for a business license. Staff directed the applicant to pursue a Heritage Revitalization Agreement in order to legalize the non-conforming use.

The Official Community Plan designates the subject property as Low Density Multiple Unit Residential. The proposal to register a Heritage Revitalization Agreement (HRA) on the subject property in order to use the heritage building for office purposes does not conform with the Official Community Plan land use designation. However, the Official Community Plan encourages the use of Heritage Revitalization Agreements as a means of facilitating the adaptive re-use and continuing protection of heritage buildings. In this regard, the adaptive re-use of the building would be appropriate given that the subject property is located in an area with a relatively high concentration of heritage properties, that the subject property is located along two major arterial roads, is in close proximity to the downtown commercial area and the use would be compatible with the residential character of the neighborhood.

Although generally supportive of the adaptive re-use of heritage buildings staff have some concerns with this application. The application lacks both a residential component and adequate parking to meet the **office use** parking standard. It is recognized by staff that the **proposed high tech product design** use is a relatively low impact type use and one that the City of Kelowna is attempting to foster; however, the scale of the use may be too large for the size of the site given the lack of suitable area and configuration for parking. The application indicates use of the church parking lot across the street, which is something that would be difficult for the City to enforce. Journey to work travel and use of cars is different from residential use of the property. Parking requirements reflect this. Also, the location of this property at a busy intersection with little opportunity to safely drive onto and exit the property for the purpose of driving someone to work (and dropping them off or picking them up) presents safety challenges, to traffic and pedestrians.

Staff does not support this application for a heritage revitalization agreement at this time.

9.0 **ALTERNATE RECOMMENDATION**

THAT Council consider a bylaw which would authorize the City of Kelowna to enter into a Heritage Revitalization Agreement for the property Lot 1, District Lot 138, ODYD Plan 38712 , located on Sutherland Avenue, Kelowna, B.C., in the form of such agreement attached to the report from the Planning & Development Services Department dated as “Schedule A”;

AND THAT the Heritage Revitalization Agreement Authorization Bylaw be prepared and forwarded to a Public Hearing for further consideration;

AND THAT final adoption of the Heritage Revitalization Agreement be considered subsequent to the completion of the requirements of the Works and Utilities Department and Inspection Services Department.

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.:** HRA04-0001
2. **APPLICATION TYPE:** Heritage Revitalization Agreement
3. **OWNER:** 457539 BC Ltd.
· **ADDRESS** 710 Sutherland Avenue
· **CITY** Kelowna, BC, Canada
· **POSTAL CODE** V1Y 2Z4
4. **APPLICANT/CONTACT PERSON:** Paul Winkers (Assured Software Ltd.)
· **ADDRESS** As Above
· **CITY**
· **POSTAL CODE**
· **TELEPHONE/FAX NO.:** 861-7001
5. **APPLICATION PROGRESS:**
 Date of Application: March 02, 2004
 Date Application Complete: March 02, 2004
 Servicing Agreement Forwarded to Applicant: N/A
 Servicing Agreement Concluded: N/A
 Staff Report to APC/CHC: March 25, 2004
6. **LEGAL DESCRIPTION:** Lot 1, District Lot 138, ODYD Plan 38712
7. **SITE LOCATION:** The subject property is located on the corner of Sutherland Avenue and Richter Street. Cathedral Church is located across the street and an apartment building is located to the south west. The house is typical of others in the immediate area.
8. **CIVIC ADDRESS:** 710 Sutherland Avenue
9. **AREA OF SUBJECT PROPERTY:** 589m²
10. **EXISTING ZONE CATEGORY:** RU6 – Two Dwelling 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 A HIGH TECH PROODUCT DESIGN COMMERCIAL USE
12. **MIN. OF TRANS./HIGHWAYS FILES NO.:** N/A
NOTE: IF LANDS ARE WITHIN 800 m OF A CONTROLLED ACCESS HIGHWAY
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
- Photographs of House
- Floor Plans

SCHEDULE "A"

HERITAGE REVITALIZATION AGREEMENT

DOCUMENT APPROVAL			
Document No. HRA04-0001			
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:

457539 BC Ltd. a company DBA as: Assured Software
710 Sutherland Avenue
Kelowna, BC, V1Y 2Z4

(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 (the "Heritage Building"), pursuant to the City's Heritage Register, which property and building are located at 710 Sutherland Avenue, Kelowna, British Columbia and legally described as:

Parcel Identifier: 008-493-260

Legal Description: Lot 1, Plan 38712, Sec. 19, Twp. 26, ODYD

(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

SCHEDULE "A" - Page 2.

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 heritage buildings located on the Heritage Lands in accordance with attached Schedules "A", "B", "C" and "D".

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 within the Heritage Building on the identified Heritage Lands:

- (a) Maximum of 11 employees (including the 5 owners) to use the existing dwelling for a high tech product design/office use. The house will be divided into office areas as shown on Schedule "B";
- (b) The Owner must ensure that agreements exist for the provision of a minimum of 7 parking stalls at any time. At least two of the stalls must be located on the heritage lands;
- (c) No dwelling units shall be developed in the heritage building without an application to amend this heritage revitalization agreement;
- (d) The Owner will not undertake any interior renovations that would compromise the future residential viability of the heritage building;
- (e) The Owner shall maintain the landscaping in a condition as close to possible as currently exists on the property;
- (f) The structure and form and character of the house will remain as shown on the site plan/survey attached as Schedule "A" and photographs attached as Schedule "D";

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

This parcel is serviced with a 19mm copper domestic water service that may be retained if it is of sufficient size. Service changes, if required, will be at the applicant's cost.

3.2 Sanitary Sewer

There is an existing 100mm-diameter sanitary sewer service to the proposed facility that may be retained.

3.3 Storm Drainage/Road Improvements

a) It will be necessary for the applicant to install a storm drainage collection system in Sutherland Avenue fronting on this property. The cost of these works is included in the road upgrading cost estimates

b) There is no storm drainage service for this lot.

c) Richter Street has been fully urbanized and no further upgrades are required at this time.

d) Sutherland Avenue fronting this property must be upgraded to a modified (separate sidewalk) collector class 1 standard (SS-R5) including concrete curb and gutter, storm drainage system, fillet pavement, underground irrigation system, and re-location or adjustment of existing utility appurtenances if required to accommodate the upgrading construction. The estimated cost of this construction for bonding purposes, not including the cost of installing a piped storm drainage system, is \$3,500.00

e) A one-time cash payment will be required for the future construction of the piped storm system fronting the property which will be performed by the city at the city's schedule, using the collected funds. The cash-in-lieu amount is determined to be \$4,250.00.

3.8 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.

3.10 Administration Charge

An administration charge is applicable to this development in the amount of 3% (+ GST) of the total off-site servicing costs. The administration charge will be assessed and must be paid prior to release of any security deposits.

4.0 Commencement and Completion

- 4.1 The Owner agrees to commence and maintain the Landscaping Works, and Works and Utilities requirements forthwith upon adoption of City of Kelowna Heritage Revitalization Agreement Authorization Bylaw No. _____ and to complete all such Works no later than June 31st, 2005.

5.0 Damage or Destruction

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

6.0 Breach

- 6.1 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 subject to 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 Amendment

- 7.1 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*.

8.0 Representations

- 8.1 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.

9.0 Statutory Functions

- 9.1 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.

10.0 Enurement

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

11.0 Other Documents

11.1 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.

12.0 Notices

12.1 Any notice required to be given pursuant to this Agreement shall be in writing and shall either be delivered or 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:

457539 BC Ltd.
DBA: Assured Software
710 Sutherland Avenue
Kelowna, BC, V1Y 2Z4

Attn: Paul Winkers

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

13.0 No Partnership or Agency

13.1 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)

457539 BC Ltd.
by its authorized signatories

In the presence of:

Witness (print name)

457539 BC Ltd.
by its authorized signatories

Address

Occupation