

# CITY OF KELOWNA

## BYLAW NO. 9274

### Heritage Revitalization Agreement Authorization Bylaw HRA04-0002 – 770 Bernard Avenue

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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 Cheryl McKenzie for the property located at 770 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 Cheryl McKenzie for the property located at 770 Bernard Avenue Kelowna, B.C., and legally described as:

Lot 9, Block 12, District Lot 138, ODYD, Plan 202

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

Considered at a Public Hearing on

Amended at first reading by the Municipal Council this

Read a second and third time by the Municipal Council this

Adopted by the Municipal Council of the City of Kelowna this

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Mayor

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City Clerk

## SCHEDULE "A" HERITAGE REVITALIZATION AGREEMENT

DOCUMENT APPROVAL			
Document No. HRA04-0002			
Cir	Department	Date	Init.
	Planning		
	Wrks. & Util.		
	Insp. Serv.		
	City Clerks		

THIS AGREEMENT dated as of the     day of             , 2004.

BETWEEN:

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

(herein called the "CITY")

AND:

Cheryl McKenzie  
770 Bernard Avenue  
Kelowna, British Columbia V1Y 6P5

(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 770 Bernard Avenue, Kelowna, British Columbia and legally described as:**

Parcel Identifier: 005-706-297

Legal Description: Lot 9, Block 12, District Lot 138, ODYD, Plan 202

(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**

SCHEDULE "A" - Page 2.

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", "B1", "B2", "C", "D1", "D2" and "E".
- 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) One Residential Unit.
  - (b) Advertising/Design Office Provided that:
    - (i) one residential dwelling unit is provided.
    - (ii) the number of staff operating from the Heritage Building is limited to a maximum of 6.
    - (iii) the house will be divided into office areas as shown on Schedule "B1" & "B2";
    - (iv) the business use is limited to opening hours between 8:00am to 5:00pm, Monday through Friday, inclusive.
    - (v) one freestanding sign not exceeding 0.23m<sup>2</sup> (2.5 ft<sup>2</sup>) be permitted in accordance with Schedule "E".
  - (c) The structure and form and character of the house will remain as shown on the site plan 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")

### **Works & Utilities Requirements**

The Works & Utilities Department have the following requirements associated with this Heritage Revitalization Agreement application.

#### **2.2.1 Domestic Water and Fire Protection**

- (a) The existing lot is serviced with a small diameter (13-mm) copper water service, which is substandard. Adequate metered water service must be provided to meet current by-law requirements.
- (b) The disconnection 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.

#### **2.2.3 Sanitary Sewer**

- (a) This property is currently serviced by the municipal sanitary sewer system. The existing 100mm-diameter service will be adequate for the proposed development and may be retained. An inspection chamber (IC) must be installed on the service at the owner's cost as required by the sewer-use bylaw.

#### **2.2.4 Storm Drainage**

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

#### **2.2.5 Road Improvements**

- (a) Bernard Avenue has been upgraded to the ultimate curb alignment. Frontage improvements are complete. And no further upgrades are required at this time.
- (b) The rear lane fronting the development has been upgraded to a paved standard and no further work is required at this time.

#### **2.2.6 Road Dedication and Subdivision Requirements**

By registered plan to provide the following:

- (a) Grant statutory right-of-way(s) if required for utility services.

SCHEDULE "A" - Page 4.

2.2.7 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.

2.2.8 Geotechnical Report

Not required for building renovation purposes.

2.2.9 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.

2.2.10 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.
- (b) Adequate dust free off-street parking must be provided.

2.3 Inspection Services

- 2.3.1 The exit from upper floor to be separated from main floor with min of 45 min Fire Resistance Rating (FRR).
- 2.3.2 The ceiling of main floor requires 45 min FRR.
- 2.3.3 A minimum of one hour fire separation wall is required between the dwelling unit and office area.
- 2.3.4 A valid Building Permit is required prior to construction.

3.0 Commencement and Completion

- 3.1 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 July 27, 2005.

**4.0 Damage or Destruction**

- 4.1 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.

**5.0 Breach**

**5.1 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.**

**6.0 Amendment**

6.1 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*.

**7.0 Representations**

7.1 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.

**8.0 Statutory Functions**

8.1 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.

**9.0 Enurement**

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

**10.0 Other Documents**

10.1 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:

Cheryl McKenzie  
770 Bernard Avenue  
Kelowna, British Columbia V1Y 6P5

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)

Cheryl McKenzie  
by it authorized signatories

In the presence of:

\_\_\_\_\_

Witness (print name)

\_\_\_\_\_

Cheryl McKenzie

\_\_\_\_\_

Address

\_\_\_\_\_

Occupation