

# CITY OF KELOWNA

## BYLAW NO. 10495

### Heritage Revitalization Agreement Authorization Bylaw HRA10-0002– 862 Bernard Avenue – 0828609 B.C. Ltd., Inc. No. 0828609

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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 0828609 B.C. Ltd., Inc. No. 0828609 for the property located at 862 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 0828609 B.C. Ltd., Inc. No. 0828609 for the property located at 862 Bernard Avenue, Kelowna, B.C., and legally described as:

Lot 22, Block 12, Section 30, Township 26, 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 this 14<sup>th</sup> day of March, 2011.

Considered at a Public Hearing this 5<sup>th</sup> day of April, 2011.

Read a second and third time by the Municipal Council this 5<sup>th</sup> day of April, 2011.

Approved under the Transportation Act this 11<sup>th</sup> day of April, 2011.




Lynda Lochhead  
(Approving Officer-Ministry of Transportation)

Adopted by the Municipal Council of the City of Kelowna this

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
City Clerk

**SCHEDULE "A"**  
**HERITAGE REVITALIZATION AGREEMENT**

DOCUMENT APPROVAL			
Document No. HRA10-0002			
Cir	Department	Date	Init.
	LUM	11/03/04	
	Dev. Eng.	11/03/04	
	Bldg & Permit	11/03/04	
	City Clerks		

THIS AGREEMENT dated as of the \_\_\_ day of March, 2011

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: 0828609 BC Ltd., Inc. No. BC0828609  
(William T. Clarke)  
862 Bernard Avenue  
Kelowna, BC, V1Y 6P5

(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 a building of heritage value, pursuant to the City's Heritage Register, which property and building are located at 862 Bernard Avenue, Kelowna, British Columbia and legally described as:

Parcel Identifier: 002-066-718  
Lot 22, Block 12, Section 30, Township 26, 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

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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 to an office building provided that:

- i. The reorganization and rehabilitation of the interior of the existing heritage home for an office commercial use with consideration that the space could be reverted to a single family dwelling;
- ii. The maximum floor area of the commercial space be limited to 172m<sup>2</sup>;
- iii. The hours of operation for all commercial enterprises located on the subject property shall take place between 8:30am - 4:30pm, Monday through Friday;
- iv. The number of staff operating from the Heritage Building is limited to a maximum of 5.5 employees that reside off-site;
- v. Five on-site parking stalls shall be provided. Two of the residential on-site parking stalls will be within the garage of the accessory building;
- vi. One residential unit shall be located within a newly constructed accessory building;
- vii. A housing agreement (Bylaw No. 10494) has been secured to ensure the affordability of the rental residential unit;
- viii. The replacement trees be the species specified in the landscape plant list (Fall Fiesta Maple, Scarlett Oak and a Satomi Dogwood) and have a minimum caliper of 15cm;
- viv. The business sign be limited to one non-illuminated nameplate not to exceed 2.5 square feet in area;
- vw. A commemorative placard noting that this was the birth home of Bill Bennett be installed on the site.

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- (b) The Owner will apply for all necessary building permits and complete the heritage revitalization works to the Heritage Building detailed in Schedule "BB1" attached to this agreement to the satisfaction of the City of Kelowna's Building and Permitting Branch prior to substantial completion of the entire development.
- 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 Land Use Management.
- 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 Schedules "BB(1-3)", and forming part of this agreement, which restoration shall include, but not be restricted to the following:
- a) Performing cosmetic upgrades to the exterior of the existing Heritage Building which will increase the life of the building's heritage features as shown on Schedule "BB (1-3)";
- 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.
- 3.0 Proposed Development**
- 3.1 The parties agree that variances to the following subsections of Section 13 - Urban Residential Zones & Section 8 - Parking and Loading of City of Kelowna Zoning Bylaw No. 8000 be granted through this agreement:

**Zoning Bylaw No. 8000 - 13.10.6 Development Regulations:**

Section 13.6.6 (c) - Development Regulation - Side Yard Setback

To legitimize the west side yard set back from 2.0m required to 0.8m proposed (existing) as shown in Schedule "AA" attached to this agreement.

Section 13.6.6 (g) - Development Regulations - Separation distance between buildings

To vary the minimum required separation between the buildings from 4.5m required to 3.86m proposed, as shown in Schedule "AA" attached to this agreement.

**Zoning Bylaw No. 8000 - Table 8.1 - Parking Schedule:**

Section 8.1 - Parking Schedule - Commercial Offices and Apartments

To vary the parking requirement from 7 stalls required to 5 stalls proposed as shown in Schedule "AA" attached to this agreement.

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- 3.2 The Owner agrees to undertake and maintain landscaping on the subject property in general accordance with the landscape plans attached hereto as Schedule "CC (1- 3)" and forming part of this agreement.

(herein after called the "Landscaping Works")

- 3.3 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.

(herein after called the "Development Engineering Department Requirements")

4.0 Development Engineering Requirements

4.1 Domestic Water

This property is currently serviced with a 19mm-diameter copper water service. The service will be adequate for this application. Metered water from the main residence must be extended to supply the proposed accessory.

4.2 Sanitary Sewer

Our records indicate that this property is currently serviced with a 100mm-diameter sanitary sewer service complete with inspection chamber (IC). The service is adequate for the proposed application.

4.3 Site Access and Development Related Issues

On-site parking modules must meet bylaw requirements.  
Direct the roof drains into on-site rock pits. This will help dissipate the roof drain water and prevent additional concentrated flows onto the rear lane.  
Provide a designated, unobstructed Emergency Access Path from the frontage road to the main entrance of the proposed accessory building.

4.4 Electric Power and Telecommunication Services

It is the applicant'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.

5.0 Building and Permitting

- 1) Development cost charges apply for the new structure and are required to be paid prior to release of the Building Permit.
- 2) Structural Floor loading of the existing building to be determined for the change of use (house to commercial).
- 3) Drawings are not complete enough to comment on for new accessory building containing a suite at the back of the lot. Require revised drawings for comment.

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**6.0 Fire Department**

An unobstructed and easily distinguishable fire fighter access path, of 1100 mm, from the street to the secondary detached building entrance is required.

If a fence is ever constructed between the dwellings a gate with a clear width of 1100mm is required for emergency access. Any gate is to open with out special knowledge. Additional visible address is required for both dwellings from Bernard Ave.

**7.0 Commencement and Completion**

7.1 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. 10495 and to complete all such Works no later than March 1, 2012.

**8.0 Damage or Destruction**

8.1 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.

**9.0 Breach**

9.1 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.

**10.0 Amendment**

10.1 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*.

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**11.0 Representations**

- 11.1 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.

**12.0 Statutory Functions**

- 12.1 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.

**13.0 Enurement**

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

**14.0 Other Documents**

- 14.1 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.

**15.0 Notices**

- 15.1 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:

0828609 BC Ltd., Inc. No. BC0828609  
(William T. Clarke)  
862 Bernard Avenue  
Kalona, BC, V1Y 6P5

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

**16.0 No Partnership or Agency**

- 16.1 The parties agree that nothing contained herein creates a relationship between the parties of partnership, joint venture or agency.

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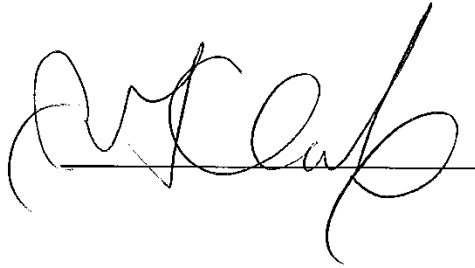
IN WITNESS WHEREOF this Agreement has been executed by the parties hereto on the day and year first above written.

CITY OF KELOWNA  
By its authorized signatories

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
City Clerk

0828609 BC Ltd., Inc. No. BC0828609  
Signed by WILLIAM T. CLARKE



\_\_\_\_\_  
Handwritten signature of William T. Clarke

In the presence of:

Birte Vedoux  
\_\_\_\_\_  
Witness (print name)



\_\_\_\_\_  
Witness (Signature)

City Hall  
\_\_\_\_\_  
Address  
Urban Planner  
\_\_\_\_\_  
Occupation