

CITY OF KELOWNA

BYLAW NO. 9184

Heritage Revitalization Agreement Authorization Bylaw HRA03-0003 - 2124 Pandosy Street

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 Oak Lodge Centre Ltd for the property located at 2124 Pandosy Street, 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 Oak Lodge Centre Ltd for the property located at 2124 Pandosy Street, Kelowna, B.C., and legally described as:

Lot 3, District Lot 14, ODYD, Plan 4551

In the form of such Agreement attached to and forming part of this bylaw as Schedule "A".

2. The Mayor and City Clerk are hereby authorized to execute the attached agreement, as well as any conveyances, deeds, receipts and other documents in connection with the attached agreement, and to affix the corporate seal of the City of Kelowna to same.

Read a first time by the Municipal Council this day of , 2004.

Considered at a Public Hearing on the day of , 2004.

Amended at first reading by the Municipal Council this day of , 2004.

Read a second and third time by the Municipal Council this day of , 2004.

Adopted by the Municipal Council of the City of Kelowna this day of , 2004.

Mayor

City Clerk

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

SCHEDULE "A" - Page 2.

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: 86.2m²
 - Unit 2: 71m²
 - Unit 3: 111m²
 - Unit 4: 75m²
 - Unit 5: 51.6m²
 - (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* as 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

- (a) 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

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

3.3 Road Improvements

- (a) 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:

- (a) 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

- (a) 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.
- (b) 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 31st, 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