

CITY OF KELOWNA

BYLAW NO. 8752

Heritage Revitalization Agreement Authorization Bylaw J.W. Hughes House – 806 Bernard Avenue

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 City of Kelowna for the property known as the J.W. Hughes House, 806 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 authorizes a Heritage Revitalization Agreement between the City of Kelowna and Michael Hill and Barbara Davidson for the property located at 806 Bernard Avenue, Kelowna, B.C., known as the J.W. Hughes House and legally described as:

Lot 14 Block 12 District Lot 138 O.D.Y.D. 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 13th day of November, 2001.

Considered at a Public Hearing this 27th day of November, 2001.

Read a second and third time by the Municipal Council this 27th day of November, 2001.

Approved under The Highways Act this

(Approving Officer - Ministry of Transportation & Highways)

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Adopted by the Municipal Council of the City of Kelowna this

Mayor

City Clerk

SCHEDULE "A"
HERITAGE REVITALIZATION AGREEMENT

DOCUMENT APPROVAL			
Document No. HRA01-010			
Cir	Department	Date	Init.
AB	Planning		
SM	Wrks. & Util.		
JW	Building		
DS	City Clerks		

THIS AGREEMENT dated as of the _____ day of _____, 2001.

BETWEEN:

CITY OF KELOWNA
1435 Water Street
Kelowna, BC
V1Y 1J4

(herein called the "CITY")

AND:

C. Michael Hill and Barbara J. Davidson
23- 545 Glenmeadows Road
Kelowna, BC
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, pursuant to the Heritage Register, which property and building are located at 806 Bernard Avenue, Kelowna, British Columbia and legally described as:

Parcel Identifier: 012-603-317
Lot 14, Block 12, D. L. 138, O.D.Y.D., 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 property 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 the Heritage Property is subject to Section 54(2) of the *Highway Act* and accordingly the approval of the Minister of Transportation & Highways is required pursuant to Section 966(6)(b) 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 Property 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 Property has heritage value, deserving of protection and conservation and the Owner specifically agrees to maintain, preserve and protect the heritage character of the building located on the heritage property.

1.2 The parties agree that the Heritage Property, notwithstanding the C10 – Heritage Cultural zoning on the Heritage Property, may be used for the following permitted uses within the Heritage Building on the identified Heritage Property:

- (a) One professional office, consisting of two work areas, a reception area, an administration area and a Board Room, provided that
 - (i) one residential unit is provided on the entire second floor of the house;
 - (ii) the number of professionals and support staff operating from the Heritage Building is limited to a maximum of five total;
 - (iii) the use is limited to between 8:00a.m. and 6:00p.m. Monday through Friday, inclusive.
- (b) The maximum floor area of the professional office be limited to the main floor, totalling 107m².
- (c) A section of the basement, limited to 40m², be used for ancillary office uses, such as storage and printing.
- (d) An artist studio in the existing accessory building.
- (e) Display and sale of artwork in the reception area of the professional office, in the rear yard and in the artist studio.

- (f) Five parking spaces located in the rear of the lot, as per Schedule 1 – “Site Plan” attached hereto and forming part of this agreement.

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 property.

1.4 Variance to the following section of City of Kelowna Sign Bylaw No. 8235 be granted through this agreement:

Section 6 – Specific Zone Regulations: Residential Zones:

To permit one free-standing sign on the Heritage Property in the CD10 – Heritage Cultural zone, at a maximum height of 1.5 metres, measured from grade at the sidewalk, and a maximum sign area of 1.8 m².

2.0 Proposed Development

The Owner agrees to restore the exterior of the Heritage Building on the Heritage Property, which restoration shall include, but not be restricted to the following:

- (a) Replacement of the roof shingles reflecting those that existed on the house in 1933;
- (b) New exterior paint; and
- (c) Restoration of the front and rear porches.

(herein after called the “Restoration Works”)

2.1 The Restoration Works shall be done in accordance with the City of Kelowna Building Bylaw No. 7245 and the British Columbia Building Code and shall require a Heritage Alteration Permit.

2.2 The Owner agrees to undertake, complete, and maintain landscaping on the subject property.

(herein after called the “Landscaping Works”)

2.3 The Owner agrees to provide and pay for all servicing required by the proposed development of the Heritage Property 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 described here:

(a) Domestic Water and Fire Protection:

This development has one existing 13mm diameter water services and must have a water meter. This configuration may be retained.

(b) Sanitary Sewer:

This property is currently serviced by the municipal sanitary sewer system. This service presently cuts through the neighbouring lot. This service requires a private easement be

registered to allow this to remain or the service should be relocated to eliminate this trespass.

(herein after called the “Servicing Works”)

3.0 Commencement and Completion

3.1 The Owner agrees to commence the Restoration Works, Landscaping Works, and Servicing Works forthwith upon adoption of City of Kelowna Heritage Revitalization Agreement Authorization Bylaw No. 8752 and to complete the Works no later than October 1, 2003.

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 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 Property 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 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 Property 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;

(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 Property.

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 Owners:

C. Michael Hill and Barbara J. Davidson
23- 545 Glenmeadows Road
Kelowna, BC
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

Signed by C. MICHAEL HILL in
the presence of:

Witness (print name)

C. MICHAEL HILL

Address

Occupation

Signed by BARBARA DAVIDSON in
the presence of:

Witness (print name)

BARBARA DAVIDSON

Address

Occupation