

# CITY OF KELOWNA

## BYLAW NO. 9183

### Heritage Revitalization Agreement Authorization Bylaw HRA03-0002 - 2034 Pandosy Street

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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 Robert and Benigna Cummings for the property located at 2034 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 Robert and Benigna Cummings for the property located at 2034 Pandosy Street, Kelowna, B.C., and legally described as:

Lot 16, Block 6, District Lot 14, ODYD, Plan 348

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.

Approved under The Highways Act this day of , 2004.

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(Approving Officer - Ministry of Transportation)

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

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Mayor

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City Clerk

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

DOCUMENT APPROVAL			
Document No. HRA03-0002			
Cir	Department	Date	Init.
AB	Planning		
SM	Wrks. & Util.		
	Building		
DS	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")

Robert Stewart Cummings  
 Benigna Valdez Cummings  
 1931 Abbott St.  
 Kelowna, BC  
 V1Y 1B8

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

Parcel Identifier: 004-556-232  
 Lot 16, Block 6, D.L. 14, O.D.Y.D., Plan 348

(herein called the "Heritage Lands")

**AND WHEREAS the Heritage Lands 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 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 maintain, preserve and protect the heritage character of the building located on the Heritage Lands.

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 on the identified Heritage Lands:

- (a) The applicant wishes to use the subject property for the development of two single unit residences in separate dwellings, as if the property was zoned RU6 – Two Dwelling Housing zone as noted in City of Kelowna Zoning Bylaw 8000, as amended.

## **2.0 Proposed Development**

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 Schedule 1, and forming part of this agreement, which restoration shall include, but not be restricted to the following:

- (a) deconstruction of the old open deck located at the rear of the existing former Dr. J.W.N. Shepherd house as noted on Schedule 1a;
- (b) replace the roof of the existing former Dr. J.W.N. Shepherd house with “heritage” style architectural asphalt shingle roofing,
- (c) refinish the exterior of the former Dr. J.W.N. Shepherd house with “heritage” coloured paint finishes (“Dark Brown” with “White” trim) with replacement or restoration of shingle siding to match original,
- (d) restoration or replacement of windows, doors and trim to match original.

(herein after called the “Restoration Works”)

SCHEDULE "A" - Page 3.

- 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 include the following:

Schedule 1b;

- (a) The dimensions and siting of the new dwelling to be constructed on the land be in general accordance with Schedule "A";
- (b) The exterior design and finish of the dwelling to be constructed on the land be in general accordance with Schedule "B";

- 2.2 The Owner agrees to undertake, complete, and maintain landscaping on the subject property in general accordance with the landscape plan attached hereto as Schedule 2, and forming part of this agreement.

(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 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 described in Schedule 3 - "Required Works and Services", attached hereto and forming part of this agreement.

(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. \_\_\_\_\_ and to complete the Works no later than August 1, 2006.

**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 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 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.**

**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 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:

Robert Stewart Cummings  
Benigna Valdez Cummings  
1931 Abbott St.  
Kelowna, BC  
V1Y 1B8

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

\_\_\_\_\_  
(E. Walter Gray, Mayor)

\_\_\_\_\_  
(Allison Flack, City Clerk)

Robert Stewart Cummings  
Signed by ROBERT STEWART CUMMINGS

\_\_\_\_\_

Benigna Valdez Cummings  
Signed by BENIGNA VALDEZ CUMMINGS

\_\_\_\_\_

In the presence of:

\_\_\_\_\_  
Witness (print name)

\_\_\_\_\_

\_\_\_\_\_  
Address

\_\_\_\_\_  
Occupation

