

# CITY OF KELOWNA

## BYLAW NO. 9346

### Heritage Revitalization Agreement Authorization Bylaw HRA04-0003 – 780 Rutland Road N

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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 The Board of School Trustees of School District No. 23 (Central Okanagan) for the property located at 780 Rutland Road N, 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 School District No. 23 for the property located at 780 Rutland Road N Kelowna, B.C., and legally described as:

Lot 48, Section 26, Township 26, ODYD, Plan 426 Except Parcel A (Plan B3687) and Lot 1, Section 26, Township 26, ODYD, Plan 2166

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

Considered at a Public Hearing on 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. HRA04-0003			
Cir	Department	Date	Init.
	Planning		
	Wrks. & Util.		
	Insp. Serv.		
	City Clerks		

**THIS AGREEMENT** made the \_\_\_\_ day of \_\_\_\_\_, 2004.

**BETWEEN:**

City of Kelowna  
1435 Water Street  
Kelowna, BC V1Y 1J4

(hereinafter called the "City")

OF THE FIRST PART

**AND:**

The Board of School Trustees of School District No. 23 (Central Okanagan)  
599 Harvey Avenue  
Kelowna, British Columbia, V1Y 6C7

(hereinafter called the "Owner")

OF THE SECOND PART

**WHEREAS** a local government may, by bylaw, enter into a Heritage Revitalization Agreement with the owner of Heritage Lands 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 known as the Rutland Elementary School constructed in 1913 and which property and heritage building are situated at 770 & 780 Rutland Road, Kelowna, British Columbia as shown on *Schedule "A"* and legally described as:

Parcel Identifier: 012-395-340 & 011-151-196

Legal Description: Lot 48, Section 26, ODYD, Plan 428 except Parcel A (Plan B3687) & Lot 1, Section 26, Township 26, ODYD, Plan 2166

(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 building 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 zoning of the Heritage Lands and for these purposes Sections 890 to 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 heritage buildings located on the Heritage Lands in accordance with attached Schedules “A”, “B” & “C”.
- 1.2 The parties agree that the Heritage Lands may, notwithstanding the RM5 – Medium Density Multiple Dwelling Housing zoning on the Heritage Lands, be used for the following permitted uses within the Heritage Building on the identified Heritage Lands:
  - a) 8 residential units
- 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.
- 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 Planning and Corporate Services.

### **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.
- 2.2 The Owner shall maintain the brick Rutland School building to ensure the integrity and preservation of the heritage building through regular maintenance and repair to prevent deterioration of the building. This will include heating and the prevention of water intrusion and damage from sun, wind, and other infestations. Maintenance and repair includes the replacement of roofing, windows, and damaged exterior material and, when necessary, painting to protect exterior features.
- 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 Future Development**

- 3.1 The Owner agrees to restore and rehabilitate the brick heritage building for residential use prior to the subdivision and development phasing plan outlined in Schedule “B”.

- 3.2 The Owner agrees that future development of the site will:
- a) maintain the brick heritage building and rehabilitate the interior of the building to allow for the development of eight residential units.
  - b) be in conformance with the general provisions of the City of Kelowna's Zoning Bylaw No. 8000 as amended, and Sign Bylaw No. 8235 as amended and the specific requirements of the RM5 – Medium Density Multiple Housing zone unless otherwise permitted or regulated through a heritage alteration permit or an amendment to this agreement;
  - c) allow for variances to the required rear yard and side yard adjacent to the Heritage Building will be permitted at the time of subdivision as outlined on Schedule "B".

3.2 No additional buildings will be permitted between the east facade of the brick heritage building and Rutland Road. Any additional buildings developed on the property must match or complement proportions, forms, materials, and heritage elements of the Rutland School building as shown in Schedule "B". Any new building not shown in Schedule "B" must be approved by City Council through the heritage alteration permit process or an amendment of this Agreement.

3.3 The Owner agrees to undertake and maintain landscaping on the subject property in general accordance with the landscape plans attached hereto as Schedule "C" and forming part of this agreement.

(herein after called the "Landscaping Works")

3.4 This Agreement shall be amended by redevelopment plans approved by a heritage alteration permit issued pursuant to Section 972 of the *Local Government Act* according to the provisions of Section 8.0 of this Agreement.

#### **4.0 Servicing**

4.1 The Owner agrees to provide, at the Owner's expense, for all necessary utility servicing required by the proposed development of the Heritage Lands in accordance with the standards of the Subdivision, Development, and Servicing Bylaw No. 7900, RM3 and RM5 Zone.

4.2 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 dedication and statutory rights-of-way for utility servicing, power and telecommunication services and street lighting.

#### **5.0 Commencement and Completion**

5.1 The Owner agrees to commence the maintenance works forthwith upon the adoption of this Heritage Revitalization Agreement Authorization Bylaw to continue a minimum standard of maintenance that will prevent deterioration of the building.

5.2 The Owner agrees to commence the servicing works forthwith, on an as-needed basis only, upon issuance of a heritage alteration permit for a principal or secondary use that requires, in the opinion of the City, additional servicing as listed in Section 4.2 of this agreement.

#### **6.0 Damage or Destruction**

In the event that the heritage building is damaged or destroyed, the parties agree as follows:

- a) The Owner may repair or reconstruct the heritage building in which event the Owner shall forthwith commence the repair or reconstruction and complete same within two years of the date of damage or destruction; or
- b) The Owner may choose not to repair or reconstruct the building in which event the City may, in its discretion, by bylaw after conducting a public hearing in the manner provided in 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 City of Kelowna zoning bylaws and in accordance with all other bylaws or regulations of the City or any other laws of authority having jurisdiction.

## **7.0 Breach**

In the event the Owner is in breach of any term of this agreement, the City may give the Owner notice of 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 limited 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 this agreement shall be terminated and all use and occupation of the Heritage Lands shall thenceforth be in accordance with the City of Kelowna zoning bylaws and in accordance with all other bylaws and regulations 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 by consent of the parties provided that a public hearing shall be held if an amendment would permit a change of use or density of use on site; or
  - b) by heritage alteration permit issued pursuant to Section 972 of the *Local Government Act*.

## **9.0 Representations**

It is mutually understood and agreed 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**

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, or regulations, all of which, except as expressly varied or supplemented herein, are applicable to the Heritage Lands.

## **11.0 Enurement**

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**

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.

### **13.0 Notices**

Any notice required to be given pursuant to this agreement shall be in writing and shall either be delivered or mailed by registered mail as follows:

a) To the City:

City of Kelowna  
1435 Water Street  
Kelowna, BC V1Y 1J4

Attention: City Clerk

b) To the Owner:

The Board of School Trustees of School District No. 23 (Central  
Okanagan)  
599 Harvey Avenue  
Kelowna, British Columbia, V1Y 6C7

or to such other address to which a party hereto may from time to time advise in writing.

**14.0 No Partnership or Agency**

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 date and year first above written.

**SIGNED** in the presence of:

City Of Kelowna (Authorized Signatories)

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Address

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

\_\_\_\_\_  
Occupation

**SIGNED** in the presence of:

(Authorized Signatories)

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Address

\_\_\_\_\_  
Occupation