

CITY OF KELOWNA

BYLAW NO. 8928

Heritage Revitalization Agreement Authorization Bylaw 2178 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 Kelowna Thoracic Surgical Group Ltd. for the property located at 2178 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 Kelowna Thoracic Surgical Group Ltd. for the property located at 2178 Pandosy Street, Kelowna, B.C., and legally described as:

Lot 3 District Lot 14 O.D.Y.D. Plan 7535

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 this

Read a second and third time by the Municipal Council this

Approved under The Highways Act this

(Approving Officer - Ministry of Transportation & Highways)

Adopted by the Municipal Council of the City of Kelowna this

Mayor

City Clerk

SCHEDULE "A"
HERITAGE REVITALIZATION AGREEMENT

DOCUMENT APPROVAL			
Document No. HRA02-0001			
Cir	Department	Date	Init.
AB	Planning		
SM	Wrks. & Util.		
JW	Insp. Serv.		
DS	City Clerks		

THIS AGREEMENT dated as of the 16th day of October, 2002.

BETWEEN:

CITY OF KELOWNA, a Municipal Corporation having offices at
1435 Water Street, Kelowna, British Columbia V1Y 1J4

(herein called the "CITY")

AND:

The Kelowna Thoracic Surgical Group Ltd.
4678 Westridge Drive
Kelowna, BC
V1W 3A8

(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 j2178 Pandosy Street, Kelowna, British Columbia and legally described as:

Parcel Identifier: 005-468-281
Lot 3, Twp. 25, Sec. 13-24, O.D.Y.D., Plan 7535

(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 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 within the Heritage Building on the identified Heritage Lands:

- (a) One residential unit;
- (b) Medical Office Space Provided that:
 - (i) one residential unit is provided,
 - (ii) The number of doctors operating from the Heritage Building is limited to a maximum of three;
 - (ii) The number of support staff operating from the Heritage Building is limited to a maximum of three;
 - (iii) The doctors' and support staffs' hours at the Heritage Building are primarily limited to the hours between 8:00 a.m. and 5:00 p.m. Monday through Friday, inclusive;
 - (iv) The number of clients' visiting the doctors' office daily does not exceed a maximum of 12 nor a maximum of 3 at any one time;

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- (c) Video Conferencing space provided that:
 - (i) one residential unit is provided,
 - (ii) use is limited to the doctors and staff of the doctors' office operating from the Heritage Building, and the doctors' clients; and
 - (iii) use is limited to between 8:00 a.m. and 10:00 p.m. Monday through Friday, inclusive.
- (c) The maximum floor area of the office space and video conferencing space be limited to the lesser of 307m² or 68% of the floor area of the principle dwelling.

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 Variances to the following sections of City of Kelowna Zoning Bylaw No. 8000 be granted through this agreement:

Section 8 - Parking and Loading; Table 8.1 - Parking Schedule.

The minimum number of required parking spaces for Single Detached Housing be varied from two spaces per dwelling unit, to no spaces per dwelling unit. And the number of spaces required for the Health Services use of the house be varied from 15 spaces required to 4 existing.

Section 8 - Parking and Loading; Table 8.2 - Loading Schedule.

The minimum loading spaces for commercial uses be varied from one space per 1,900 m² Gross Floor Area required, to no loading space required.

1.5 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 Lands in the RU1 – Large Lot Housing zone, at a maximum height of 2.1 metres, measured from grade at the sidewalk, a maximum width of 0.6 metres, and a maximum sign area of 1.3 m² at the driveway entrance to the property;

AND To permit signage with a maximum area not to exceed 1.6m in height and 0.76m² in area on the front gate of the property.

2.0 Proposed Development

2.1 The Owner agrees to undertake maintain landscaping on the subject property in general accordance with the landscape plan attached hereto as Schedule 1, 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")

Works & Utilities Requirements

2.2.1 Domestic Water and Fire Protection

- (a) This parcel is serviced with a 19mm copper domestic water service, which can be retained if it is of sufficient size. If a larger service is required it can be provided at owner's cost.

2.2.2 Sanitary Sewer

- (a) This property is serviced from a sewer main on Royal Avenue. Our records indicate that the existing 100mm service encroaches slightly onto Lot 1 Plan 7535 and runs through Lot 4 Plan 7535. We have not record of an easement in place over the service to protect the owner of Lot 3 Plan 7535.
- (b) Realign the service on Royal Avenue, abandon and cap the section of pipe encroaching onto Lot 1.
- (c) Obtain a Section 219 agreement with the owner of Lot 4 and reconnect the service to Lot 3.
- (d) Alternatively, a new service can be provided from Pandosy Street at the applicant's cost. The existing service must then be capped at the property line on Royal Avenue.
- (e) All the works within the road right-of-way related to the sewer service are to be done by city crew at the developer's cost. No Servicing Agreement will be required.

2.2.3 Storm Drainage

- (a) There is no existing storm drainage for this lot.
- (b) An overflow service can be provided at the developer's cost.

2.2.4 Road Improvements

- (a) Pandosy Street was upgraded recently to the ultimate curb alignment. Frontage improvements including a new sidewalk were completed. No further upgrades are required at this time.

2.2.5 Road Dedication and Subdivision Requirements

- (a) Dedicate 3.20 meter widening of Pandosy Street fronting this property.
- (b) Grant Statutory right-of-way(s) if required for utility services.

2.2.6 Survey Monuments and Iron Pins

If any legal survey monuments or property iron pins are removed or disturbed during construction, the developer will be invoiced a flat sum of \$1,200.00 per incident to cover the cost of replacement and legal registration. Security bonding will not be released until restitution is made.

Site Related Issues

- (a) The development will be required to contain and dispose of site generated storm water by installing a ground recharge system consisting of drywells and perforated pipe bedded in drain rock.
- (b) The proposed signage at the driveway entrance must be within the property line boundaries.

- 2.3 The Owner agrees to 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 and to provide any required bonding for same as noted below - "Inspection Services Requirements", and forming part of this agreement.

Inspection Services Requirements

- 2.3.1 There are a number of upgrades required to convert this home into an office building. The Building Code makes some exception for Heritage buildings if the building is sprinklered with fast response heads and supervised (i.e. connected to monitoring agency). The lower floor ceiling is required to be drywalled with ½" Type X gypsum.
- 2.3.2 If the building is not sprinklered the following upgrading is required:
- a) The lower floor ceiling shall be drywall with 5/8" Type X gypsum.
 - b) The open stair to the second floor shall be separated at the bottom of the stairs with rated partitions and a rated door.
 - c) A second exit is required from the second floor offices.
 - d) The firebox of the fireplace required repair.
- 2.3.3 Final adoption of this Heritage Revitalization Agreement will be subject to the completion of items 2.3.1-2.3.2 or approval of an equivalency report submitted by the applicant to the Inspection Services Department that finds/suggests a suitable alternative to the above-mentioned requirements.

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. 8602 and to complete the Works no later than October 16th, 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 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 or;
- (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

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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:

The Kelowna Thoracic Surgical Group Ltd.
4678 Westridge Drive
Kelowna, BC
V1W 3A8

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)

(David L. Shipclark, City Clerk)

Dr. Bill Nelems
Signed by DR. BILL NELEMS in
the presence of:

Witness (print name)

DR. BILL NELEMS

Address

Occupation

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Dr. Michael Humer
Signed by DR. MICHAEL HUMER in
the presence of:

Witness (print name)

DR. MICHAEL HUMER

Address

Occupation

Dr. Andrew Luoma
Signed by DR. ANDREW LUOMA in
the presence of:

Witness (print name)

DR. ANDREW LUOMA

Address

Occupation