

SCHEDULE "A"
HERITAGE REVITALIZATION AGREEMENT

THIS AGREEMENT dated as of the _____ day of _____, 2019

BETWEEN:

City of Kelowna, a Municipal Corporation having offices at 1435 Water Street, Kelowna, British Columbia V1Y 1J4

(herein called the "CITY")

OF THE FIRST PART

AND: Davara Holdings Ltd. of
1-911 Borden Avenue, Kelowna, British Columbia, V1Y 6A5

(herein called the "OWNER")

OF THE SECOND PART

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 610 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 "Murchison House", pursuant to the City's Heritage Register, which property and building are located at 1781 Abbott Street, Kelowna, BC and legally described as:

Parcel Identifier: 010-990-011
Lot 2, District Lot 14, ODYD, Plan 2614

(herein called the "Subject Property")

AND WHEREAS the Owner has presented to the City a proposal for the use, development and preservation of the Subject Property and has voluntarily and without any requirement by the City, entered into this agreement pursuant to Section 610 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 Subject Property and for these purposes Section 464 through 470 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 594 of the *Local Government Act* and give notice to the Minister responsible for the *Heritage Conservation Act* in accordance with Section 595 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 Subject Property have heritage value, deserving of protection and conservation and the Owner specifically agrees to rehabilitate¹, maintain, preserve and protect the heritage character of the existing Heritage Building (Murchison House) located on the Subject Property in accordance with Attachments A, B and C.
- 1.2 The parties agree that the Subject Property may, notwithstanding Zoning Bylaw no. 8000 including the provisions identified in the RU1 – Large Lot Housing zoning on the Subject Property, be used for the following permitted uses:
- (a) The adaptive reuse¹ of the existing Heritage Building on the property to allow office as a permitted use, provided that:
 - i. The the existing Heritage Building is relocated and repositioned as per the Site Plan illustrated in Schedule B;
 - ii. The maximum floor area of the commercial space be limited to 118m²;
 - iii. The hours of operation to serve clients from the commercial space shall take place between 7:00am – 6:00pm, Monday through Saturday;
 - iv. The number of staff operating from the existing Heritage Building is limited to a maximum of 5;
 - v. The business sign adhere to the City Sign Bylaw No.11530, and be approved by Development Planning Department prior to installation.
 - (b) The construction of new housing on the property to allow two dwelling housing as a permitted use, provided that:
 - i. The use is in conformance with the Heritage Revitalization Agreement Bylaw No. 11923, as two dwelling housing;
 - ii. The dimensions and the siting of the two dwelling housing to be constructed on the Subject Property be in general accordance with Schedule B;
 - iii. The exterior design and finish of the two dwelling housing to be constructed on the Subject Property be in general accordance with Schedule C.
 - (c) The site planning and landscaping on the Subject Property, provided that:
 - iv. A minimum of six on-site surface parking stalls and a designated area for bike racks shall be provided as per the Site Plan illustrated Schedule B;

¹ As defined by "Standards and Guidelines for the Conservation of Historic Places in Canada", second edition, 2010, and detailed in City of Kelowna's "Adaptive Reuse Guidelines for Residential Heritage Buildings".

SCHEDULE "A" HRA18-0001

- v. A minimum of three dedicated on-site parking stalls shall be provided for the office use operating from the Heritage Building, and three on-site parking stalls shall be provided for the two dwelling housing;
 - vi. Parking signs for minimum of 2 commercial office parking stalls shall be installed, and indicate hours for office parking use: "Commercial Parking 7:00am – 6:00pm, Residential Visitor Parking 6:00pm – 7:00am, Monday to Saturday, and Sunday";
 - vii. A historical plaque summarizing the heritage value of the Heritage Building and the works completed on the Subject Property shall be installed and maintained at the expense of the applicant, subject to approval by the City of Kelowna;
 - viii. The Owner agrees to install and maintain landscaping on the Subject Property in general accordance with the attached landscape plans (Schedule D);
 - ix. The Owner agrees to post a Landscape Performance Security bond with the City in the form of a "Letter of Credit" or cash in the amount of 125% of the estimated value of the landscaping, as determined by a professional landscaper, as outlined in Schedule D.
- 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 property and commercial business.
- 1.4 Where a Heritage Alteration Permit is required, the discretion to approve, refuse, or revise such permit is delegated by Council to the Divisional Director, Planning and Development Services.
- 1.5 The Owner agrees to prove and pay for all servicing required by the proposed development of the subject property and to provide required bonding for same, including, but not limited to: domestic water and fire protection, sanitary sewer, storm drainage, road improvements, power and telecommunication services and street lights, as per Development Engineering Memorandum, dated November 14, 2018, (Attachment D).
- 2.0 Conservation and Maintenance of Existing Development.**
- 2.1 The Owner agrees not to alter the exterior of the existing Heritage Building or heritage character other than as described in Schedules B and C pursuant to a Heritage Alteration Permit issued by the City, and in accordance with this agreement;
- 2.2 The Owner agrees to maintain the exterior of the existing Heritage Building on the Subject Property in general accordance with the Acne Building Services Heritage Report entitled "*Davara Holdings Ltd. Rehabilitation Proposal at 1781 Abbott Street, Kelowna*" prepared by Elena Zysblat, registered heritage consultant, dated March 29, 2019, Attachment B;
- 2.3 If original features must be replaced, the new material shall be similar or identical to the original and shall be subject to the issuance of a minor Heritage Alteration Permit. Where original features were removed through earlier renovations or alterations and the replacements were not in keeping with the original style of the existing Heritage Building, any subsequent replacement of these features shall complement the building's heritage style;

2.4 The heritage restoration will follow the recommendations outlined in Acne Building Services Heritage Report attached as Attachment B. Any deviations or changes from outlined recommendations will first be reviewed and approved by the Heritage Consultant. Additionally, the design architect will provide a letter of conformance upon completion of heritage restoration and prior to occupancy.

2.5 Upon occupancy of the heritage asset, the Heritage Consult must an updated Statement of Significance submit to the City for review.

4.0 Commencement and Completion

4.1 The Owner agrees to commence the proposed development upon adoption of City of Kelowna Heritage Revitalization Agreement Authorization Bylaw No. 11923 and to commence all such works within 2 years of the adoption of the HRA.

5.0 Damage or Destruction

5.1 In the event that no more than 75% of 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 may, by bylaw, and after conducting a Public Hearing in the manner prescribed by Sections 464 through 470 of the *Local Government Act*, cancel this agreement, whereupon all use and occupation of the Subject 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 Breach

6.1 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 464 through 470 of the *Local Government Act*, cancel this Agreement whereupon all use and occupation of the Subject 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.

7.0 Amendment

7.1 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 617 of the *Local Government Act*.

8.0 Representations

8.1 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.

9.0 Statutory Functions

9.1 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 Subject Property.

10.0 Inurement

10.1 This Agreement inures to the benefit of and is binding upon the parties hereto and their respective heirs, executors, administrators, successors and assigns.

11.0 Other Documents

11.1 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.

12.0 Notices

12.1 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:

David Sargent
1-911 Borden Ave
Kelowna, BC
V1Y 6A5

Or, to such other address to which a party hereto may from time to time advise in writing

13.0 No Partnership or Agency

13.1 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

David Sargent

Date: *Sept 23/19*

[Handwritten signature]

In the presence of:

REBECCA ELIZABETH VAN HUIZEN
A COMMISSIONER FOR TAKING
AFFIDAVITS FOR BRITISH COLUMBIA
1135 WATER STREET, KELOWNA, BC V1Y 1J4
Witness (print name) 2016-1155
Expiry Date: 2019-10-31

Rebecca Van Huizen

Witness (Signature)

Address

Occupation