

SCHEDULE "A"
HERITAGE REVITALIZATION AGREEMENT

THIS AGREEMENT dated as of the _____ day of _____, 2023

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: Kelowna Train Station Inc., Inc. No. BCo847922 of
5711 1st Street SE
Calgary, Alberta
T2H 1H9

(herein called the "OWNER")

OF THE SECOND PART

WHEREAS a local government may, by bylaw, enter into a Heritage Revitalization Agreement ("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 "Train Station Pub" a.k.a Heritage Building, pursuant to the City's Heritage Register, which property and building are located at 1175-1177 Ellis Street, Kelowna, BC and legally described as:

Parcel Identifier: 024-929-409
Lot A, District Lot 139, Osoyoos Division Yale District, Plan KAP68238

(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 Agreement

- 1.1 The parties agree that the Subject Property located at 1175-1177 Ellis Street have heritage value, deserving of protection and conservation.
- 1.2 The Owner specifically agrees to maintain, preserve, and protect the heritage character of buildings located on the Subject Property in accordance with Schedule B (Architectural Drawing Set) and Schedule C (Landscape Drawing Set).
- 1.3 All buildings (existing and proposed) as well as the existing Heritage Garden and Plaza located on the Subject Property, which are referenced within this Agreement, are illustrated in Schedule B - Site Plan, drawing A-101.
- 1.4 The parties agree that the Subject Property may, notwithstanding Zoning Bylaw No. 12375 including the provisions identified in the UC1 – Downtown Urban Centre zoning, be developed under the following regulations:

Table 1: HRA22-0001 regulations as per Zoning Bylaw No. 12375

HRA22-0001 Regulations			
CRITERIA		PARAMETER	
Permitted Uses			
<u>Building A</u>			
Principal Uses	Offices		
	Retail		
<u>Building B</u>			
Principal Uses	Offices		
	Retail		
<u>Building C</u>			
Principal Uses	Offices		
	Retail		
<u>Train Station Pub</u> – Existing Heritage Building			
Principal Uses	Liquor Primary		
	Retail		
Development Regulations (UC1)			
Permitted		Proposed	
Max Height = 6 storeys (22.0m)		Building A = 2 storeys (6.84 m) Building B = 5 storeys (21.0 m) Building C = 1 storey (6.6 m)	
Max FAR = 1.0		0.58	
Max Site Coverage of all Buildings = 100%		28.8%	
Parking Regulations (UC1)			
Permitted		Proposed	
Minimum: 0.9 spaces / 100m ² GFA		48 stalls	
Maximum: 3.0 spaces / 100m ² GFA			
	Min		Max
Building A	4.7		15.5
Building B	17.7		59.1
Building C	2.0		6.6
Existing Heritage Pub	3.2		10.7
<i>Total</i>	<i>27.6</i>	<i>91.9</i>	

- 1.5 All other permitted land uses under UC1 – Downtown Urban Centre zone as per Zoning Bylaw No. 12375 may be considered on the Subject Property, pending a change of land use review and analysis which prove out the development regulations associated with the additional land use(s). Any change to land use is pursuant to an amendment to this Agreement.
- 1.6 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.
- 1.7 Bylaw No. 12420 Development Cost Charges will not apply to the existing Heritage Building but will apply to new buildings, specifically Building B, Building C, and to the new addition (expansion) to Building A only, permitted through this Agreement.

2.0 Conservation and Maintenance of Existing Heritage Building (Train Station Pub)

- 2.1 The existing Heritage Building located on the Subject Property is illustrated on Schedule B - Site Plan, drawing A-101.
- 2.2 The Heritage Building was designated as a heritage site under a Heritage Designation (HD) bylaw (BL10268) in 2009.
- 2.3 As per HD bylaw BL10268, the Owner agrees not to alter the exterior through renovation, addition, and/or tenant improvement of the Heritage Building except pursuant to a Heritage Alteration Permit issued by the City.
- 2.4 The Owner shall maintain the Heritage Building to ensure the integrity and preservation of existing heritage elements as per the original intent (Schedule D) through regular maintenance and repair to prevent deterioration of the Heritage Building.
- 2.5 The Owner agrees to maintain and/or repair the exterior of the Heritage Building in accordance with the condition assessment report titled "Heritage Element and Structural Visual Assessment" prepared by RJC Engineering, dated December 23, 2022, attached hereto as Attachment A. The interior layout of the heritage buildings will be determined by the Owner, subject to BC Building Code requirements.
- 2.6 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.

3.0 Conservation and Maintenance of Existing Heritage Garden and Plaza

- 3.1 The existing Heritage Garden and Plaza located on the Subject Property is illustrated on Schedule B – Site Plan, drawing A-101.
- 3.2 The Owner shall maintain the Heritage Garden and Plaza to ensure the integrity and preservation of existing heritage elements as per the original intent (Schedule E) through regular maintenance and repair to prevent deterioration of the Heritage Garden and Plaza.
- 3.3 The Owner agrees to maintain, replace and/or repair items in accordance with the Heritage Garden and Plaza assessment report titled "Railway Garden and Plaza Heritage Assessment" prepared by VDZ + A, dated February 2023, attached hereto as Attachment B.

4.0 Preservation and Protection of the Ginkgo Tree

- 4.1 An existing mature Ginkgo tree located on the Subject Property is illustrated on Schedule B – Site Plan, drawing A-101.
- 4.2 The Owner agrees to preserve and protect the mature Ginkgo tree prior to, during, and post development in accordance with the "Tree Preservation Plan" prepared by Bartlett Tree Experts, dated February 24, 2023, attached hereto as Attachment C.
- 4.3 The Owner agrees to register a Section 219 Tree Protection Covenant to protect the mature Ginkgo tree as per the term and conditions of the Covenant.

5.0 Proposed New Development:

- 5.1 The Owner agrees that the construction of new buildings on the property to allow commercial development as a permitted use, provided that:
 - i. The use is in conformance with the Heritage Revitalization Agreement Bylaw No. 12588, as outlined in Table 1;
 - ii. The dimensions and the siting of the new buildings to be constructed on the Subject Property be in general accordance with Schedule B;
 - iii. The exterior design and finish of the new buildings to be constructed on the Subject Property be in general accordance with Schedule B.

- 5.2 The Owner agrees not to alter the exterior through a renovation, addition and/or tenant improvement of the new buildings except pursuant to a Heritage Alteration Permit issued by the City, and in accordance with this Agreement.
- 5.3 No additional buildings will be permitted between the South façade of the Heritage Building and Clement Avenue, nor between the West façade and Ellis Street.
- 5.4 The Owner agrees that the site planning and landscaping on the Subject Property, provided that:
- i. Surface parking stalls and a designated area for bike racks shall be provided as per Schedule B;
 - ii. The Owner agrees to install and maintain landscaping on the Subject Property in general accordance with the attached landscape plans, Schedule C;
 - iii. 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 C.
- 5.5 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 June 15, 2023, Attachment D).

6.0 Commencement and Completion

- 6.1 The Owner agrees to commence the proposed development upon adoption of City of Kelowna Heritage Revitalization Agreement Authorization Bylaw No. 12588 and to commence all such works within two (2) years of the adoption of the Heritage Revitalization Agreement.
- 6.2 In the event the Owner has not commenced works within the two (2) years of the adoption of the Heritage Revitalization Agreement, then a Heritage Alteration Permit will be required to assess the form and character of any unconstructed building(s).

7.0 Damage or Destruction

- 7.1 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.

8.0 Breach

- 8.1 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.

9.0 Amendment to the Heritage Revitalization Agreement

- 9.1 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*.

10.0 Representations

- 10.1 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.

11.0 Statutory Functions

- 11.1 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.

12.0 Inurement

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

13.0 Other Documents

- 13.1 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.

14.0 Notices

- 14.1 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:
Kelowna Train Station Inc., Inc. No. BCo847922
5711 1st Street SE
Calgary, Alberta
T2H 1H9

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

15.0 No Partnership or Agency

- 15.1 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.

Attachments:

Schedule A: Draft Heritage Revitalization Agreement

Schedule B: Rationale Letter and Architectural Drawing Set

Schedule C: Landscape Drawing Set and Cost Estimate Letter

Schedule D: Heritage Building (Train Station Pub) Original Intent HRA10-0001

Schedule E: Heritage Garden Original Intent HRA10-0001

Attachment A: Heritage Building (Train Station Pub) Assessment Report

Attachment B: Heritage Garden Assessment Report

Attachment C: Tree Preservation Plan

Attachment D: Development Engineering Memorandum

Attachment E: Heritage Consultant Review

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SCHEDULE "A" HRA22-0001

CITY OF KELOWNA
By its authorized signatories

Mayor

City Clerk

Applicant Name

kelowna Train Station Inc.

Date:

10/10/2023

In the presence of:

DocuSigned by:
Jane Ryan
5319EE0F68E44BE
Jane Ryan (Authorized signatory)

Witness (print name)

Witness (Signature)

Address

Occupation