

CITY OF KELOWNA

BYLAW NO. 11319

Heritage Revitalization Agreement Authorization Bylaw HRA16 - 0002– 4125 & 4193 Gordon Drive – Colin Gifford Magnus Thomson

WHEREAS a local government may, by bylaw, enter into a heritage revitalization agreement with the Owner of certain real property which Council deems to be of heritage value pursuant to section 610 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 Colin Gifford Magnus Thomson for the certain real property on which is situated two buildings of heritage value located at 4193 and 4125 Gordon Drive, 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 Colin Gifford Magnus Thomson for the certain real property located at 4193 and 4125 Gordon Drive, Kelowna, B.C., and legally described as:

Lot 3, Section 6, Township 26, ODYD, Plan KAP46027 and Lot 3, Section 6, Township 26, ODYD, Plan KAP80134

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 21st day of November, 2016.

Considered at a Public Hearing this

Read a second and third time by the Municipal Council

Adopted by the Municipal Council of the City of Kelowna this

Mayor

City Clerk

SCHEDULE "A"
HERITAGE REVITALIZATION AGREEMENT

SCHEDULE A	
This forms part of application # HRA16-0002	
Planner Initials	TB
 City of Kelowna COMMUNITY PLANNING	

THIS AGREEMENT dated as of the 8 day of November, 2016

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: Colin Gifford Magnus Thomson
4193 Gordon Drive
Kelowna, British Columbia
V1W 1S4

(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 two buildings of heritage value, pursuant to the City's Heritage Register, which property is located at 4193 Gordon Drive, Kelowna, British Columbia; including the Thomson Farm House located on 4193 Gordon Drive, Kelowna, BC and the Tobacco Barn located at 4125 Gordon Drive, Kelowna British Columbia, and legally described as:

Parcel Identifier: 017-524-822
Lot 3 Section 6 Township 26 ODYD Plan KAP46027

And

Parcel Identifier: 026-563-401
Lot 3 Section 6 Township 26 ODYD Plan KAP80134

(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 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 Heritage Lands and for these purposes Section 464 through 470 of the *Local Government Act* apply;

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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 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 Thomson Farm House and the Tobacco Barn on G. Thomson Farm located on the Heritage Lands as photographed in Schedule "AA".

1.2 The parties agree that the Heritage Lands may, notwithstanding the A1 - Agriculture Zoning on the Heritage Lands, be used for the following permitted uses:

(a) The construction of an accessory building to be used as a Bed and Breakfast for tourist accommodations:

- i. The siting of the accessory building is contained within the Farm Building Footprint indicated on Schedule "BB";
- ii. The maximum floor area of the accessory building is limited to 90m²;
- iii. The height of the accessory building be restricted to 6.0m maximum at mid-point;
- iv. The form and character of the accessory building shall be approved through a Heritage Alteration Permit and is to reflect the form and character of the Thomson Farm House;
- v. The accessory building may be used for short term vacation rentals;
- vi. The accessory building may contain one kitchen;
- vii. The accessory building may contain bedroom(s) and bathroom(s);
- viii. One additional parking stall shall be provided within the Farm Building Footprint indicated on Schedule "BB";
- vi. Agriculture shall remain as the principal use on the subject property;
- vii. The subject property shall retain Farm Status through BC Assessment;
- viii. The accessory building shall be screened from Gordon Drive through the use of landscaping;
- viv. The business sign be limited to one non-illuminated nameplate not to exceed 2.5 square feet in area;

(b) The Owner will apply for all necessary building permits and Heritage Alteration Permits for construction of the accessory building;

SCHEDULE "A" - Page 3.

- (c) No major changes or additions are proposed to the Thomson Farm House or Tobacco Barn at this time;
 - (d) The applicant will apply to have the Thomson Farm House and Tobacco Barn Heritage Designated by Bylaw as a function of this Heritage Revitalization Agreement.
- 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 and the Heritage Building.
- 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 Land Use Management.
- 2.0 Conservation and Maintenance of Existing Development.**
- 2.1 The owner agrees not to alter the exterior through a major renovation or addition of the heritage buildings (Thomson Farm House and Tobacco Barn on G. Thomson Farm) except pursuant to a Heritage Alteration Permit issued by the City, and in accordance with this agreement.
- 2.2 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.
- 2.3 The parties agree that the heritage buildings are to be inspected every two (2) years to ensure that regular maintenance and upkeep is consistent with the standards of this agreement.
- 3.0 Proposed Development**
- 3.1 The parties agree that variances to the following sections of City of Kelowna Zoning Bylaw No. 8000 be granted through this agreement:

Zoning Bylaw No. 8000:

Section 6.5.11 - Accessory Development

To allow the proposed accessory development to contain bedroom(s); bathroom(s); and one kitchen;

Section 9.6.1 (a) - Bed and Breakfast Homes

To allow Bed and Breakfast as a secondary use in a detached accessory building rather than in the principal dwelling.

Section 9.6.1 (c) - Bed and Breakfast Homes

To allow the licensed operator of the Bed and Breakfast to reside in their primary dwelling and not the dwelling where the Bed and Breakfast is being operated.

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- 3.2 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 in section 4.0 of this agreement.

(herein after called the "Development Engineering Department Requirements")

4.0 **Development Engineering Requirements**

Domestic Water

Our records indicate that this property is currently serviced with a 50mm-diameter water service which is adequate for this application.

Sanitary Sewer

Sanitary sewage is currently handled by an on-site sewage disposal system. On-site servicing will be reviewed by the Interior Health Authority and Building & Permitting.

Site Access and Development Related Issues

Direct the roof drains onto splash pads.

Electric Power and Telecommunication Services

It is the applicant's responsibility to make a servicing application with the respective electric power, telephone, and cable transmission companies to arrange for service upgrades to these services which would be at the applicant's cost.

Otherwise, all requirements of City of Kelowna Subdivision, Development, and Servicing Bylaw No. 7900 apply.

5.0 **Commencement and Completion**

- 5.1 The Owner agrees to commence the proposed development upon adoption of City of Kelowna Heritage Revitalization Agreement Authorization Bylaw No. _____ and to complete all such construction within 2 years of the Heritage Alteration Permit issuance.

6.0 **Damage or Destruction**

- 6.1 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,

SCHEDULE "A" - Page 5.

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 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.

7.0 Breach

7.1 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.

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 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*.

9.0 Representations

9.1 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.

10.0 Statutory Functions

10.1 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.

11.0 Inurement

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

12.0 Other Documents

12.1 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.

SCHEDULE "A" - Page 6.

13.0 Interpretation

Unless defined otherwise in this document all terms are defined in City of Kelowna Zoning Bylaw No. 8000.

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:

Colin Gifford Magnus Thomson
4193 Gordon Drive
Kelowna, British Columbia
V1W 1S4

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.

CITY OF KELOWNA
By its authorized signatories

Mayor

City Clerk

Colin Thomson

Colin Gifford Magnus Thomson, Owner

COLIN G. M. THOMSON

In the presence of:

Trisa Brandt

Witness (print name)

[Signature]

Witness (Signature)

2219 Aberdeen St.

Address

Planner - City of Kelowna.

Occupation



SCHEDULE AA
Two items part of application
#HRA16-0002



City of
Kelowna
COMMUNITY PLANNING

Planner
Initials TB

Thomson Farm House
4193 Gordon Drive



Thomson Farm House
4193 Gordon Drive



SCHEDULE AA

This item is part of application # HRA18-0002

Planner Initials **TB**

City of Kelowna
COMMUNITY PLANNING

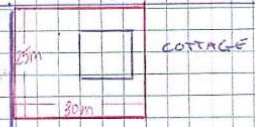
Tobacco Barn
4125 Gordon Drive

GORDON VINE

SCHEDULE BB

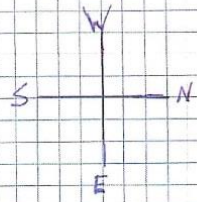
This forms part of application # HRA16-0002

Planner Initials **TB**



Farm Building Footprint to be in South West Corner of Property
25m x 30m = 600m²

DRIVEWAY



1 SQUARE = 5 M

