

CITY OF KELOWNA

BYLAW NO. 11371

**Heritage Revitalization Agreement Authorization Bylaw HRA16-0001 –
Donald McDonald and Linda Scott-McDonald
1449 Ethel 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 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 Donald McDonald and Linda Scott-McDonald for the property located at 1449 Ethel 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 Donald McDonald and Linda Scott-McDonald for the property known as the "Billy-Lloyd Jones House" located at 1449 Ethel Street, Kelowna, B.C., and legally described as:

Lot 1, District lot 138, ODYD, Plan 2442;

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.
3. This bylaw shall come into full force and effect as of and from the date of adoption.

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 Transportation Act this

(Approving Officer-Ministry of Transportation)

Adopted by the Municipal Council of the City of Kelowna this

Mayor

City Clerk

SCHEDULE "A"
HERITAGE REVITALIZATION AGREEMENT

THIS AGREEMENT dated as of the ___ day of _____, 2017

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: Donald Franklin McDonald and Linda Joan Scott-McDonald of 1449 Ethel Street, Kelowna, British Columbia, V1Y2X5

(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, pursuant to the City's Heritage Register, which property and building are located at 1449 Ethel Street, Kelowna, BC and legally described as:

Parcel Identifier: 002-001-527
Lot 1, District Lot 138, ODYD, Plan 2442

(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;

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 maintain, preserve and protect the heritage character of the buildings located on the Heritage Lands (Billy Lloyd-Jones House) in accordance with attached Schedule "AA".
- 1.2 The parties agree that the Heritage Lands may, notwithstanding the RU6 – Two Dwelling Housing zoning on the Heritage Lands, be used for the following permitted uses:
- (a) The adaptive reuse of the residential property to a space for small scale special events such as but not limited to weddings, corporate lunches, birthday parties, garden tours, and heritage tours, provided that:
- i. The hours of operation for any commercial enterprises taking place outdoors on the subject property shall take place between 9am – 10pm, Sunday through Saturday;
 - ii. The hours of operation for any commercial enterprises taking place indoors on the subject property shall take place between 9am – 12 midnight, Sunday through Saturday;
 - iii. The frequency of weekend events is not to exceed 4 events per month to a maximum of 24 per year;
 - iv. The frequency of weekday events is not to exceed 4 events per month to a maximum of 24 per year;
 - v. The subject property must adhere to the rules and regulations set out in the City of Kelowna Noise Control Bylaw No. 6647.
 - vi. The number of attendees is limited to 30 guests within the heritage home as per British Columbia Building Code Regulations;
 - vii. The serving of alcohol is regulated by the Liquor Control and Licensing Branch of British Columbia (LCLB) and hosts of the special events shall abide by the licensing regulations of the LCLB;
 - viii. Four on-site parking stalls shall be provided on the front driveway accessed from Ethel Street;
 - ix. One on-site loading stall shall be provided from the lane off Stockwell Avenue;
 - vi. A minimum of one dwelling unit on site shall be used for a full time residence;
 - vii. A maximum of 4 Bed & Breakfast rooms within the heritage home may be used for nightly accommodation as related to hosting special events. Consecutive stays must be 3 days or less;
 - viii. The 2 bedroom carriage house may be used for special events and/or nightly accommodation as related to hosting special events. Consecutive stays for nightly accommodation must be 3 days or less;
 - iv. A maximum of 4 rooms may be used for nightly accommodation at any one point in time in any combination of rooms in the heritage home and carriage house;
 - vv. The business sign be limited to one non-illuminated nameplate not to exceed 2.5 square feet in area as regulated by City of Kelowna Sign Bylaw No.8235;

- vii. Fencing and landscaping shall be maintained to provide a visual and sound buffer for adjacent properties;
 - viii. No nuisance from noise, vibration, smoke, dust, odours, traffic, heat, glare, electrical or radio disturbance shall be produced and the privacy and enjoyment of adjacent properties shall be preserved;
 - viii. The owners/operators of the business shall hold a valid City of Kelowna Business License for Special Events and Bed and Breakfast as per City of Kelowna Business License and Regulation Bylaw No. 7878.
- 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 Director of Land Use Management.
- 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, and in accordance with this agreement.
- 2.2 The owner agrees to maintain the exterior of the Heritage Building (Billy Lloyd-Jones House) and Carriage House on the Heritage Lands in general accordance with the photographs attached hereto as Schedule "AA";
- 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 Proposed Development**
- 3.1 The parties agree that variances to the following subsections of City of Kelowna Zoning Bylaw No. 8000 be granted through this agreement:
- Zoning Bylaw No. 8000 – Section 9.5b.8 – Carriage House Regulations**
- To allow a carriage house in conjunction with a Bed and Breakfast.
- Zoning Bylaw No. 8000 – Section 9.6.1(a) – Bed and Breakfast Regulations:**
- To allow a Bed and Breakfast to operate with a total of 6 rooms, only 4 of which may be used at any one time; and to allow 2 of those rooms to exist in the carriage house rather than the principal dwelling.
- Zoning Bylaw No. 8000 – Table 8.1 – Parking Schedule:**
- To reduce the required number of parking spaces from 8 (required) to 4 plus 1 loading stall (proposed).
- 3.2 The Owner agrees to undertake and maintain appropriate landscaping on the subject property.

4.0 Damage or Destruction

4.1 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 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 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.

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 617 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

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 Inurement

9.1 This Agreement inures 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:

Donald Franklin McDonald
Linda Joan Scott-McDonald
1449 Ethel Street
Kelowna, BC
V1Y2X5

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

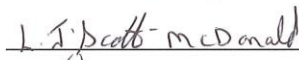
Mayor

City Clerk

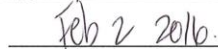
Donald Franklin McDonald



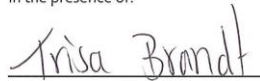
Linda Joan Scott-McDonald



Date:



In the presence of:



Witness (print name)
TRISA BRANDT
A COMMISSIONER FOR TAKING
AFFIDAVITS FOR BRITISH COLUMBIA
1135 WATER STREET, KELOWNA, BC V1Y 1J4
Address
Order No. 2015-1159
Expiry Date: 2018-09-30



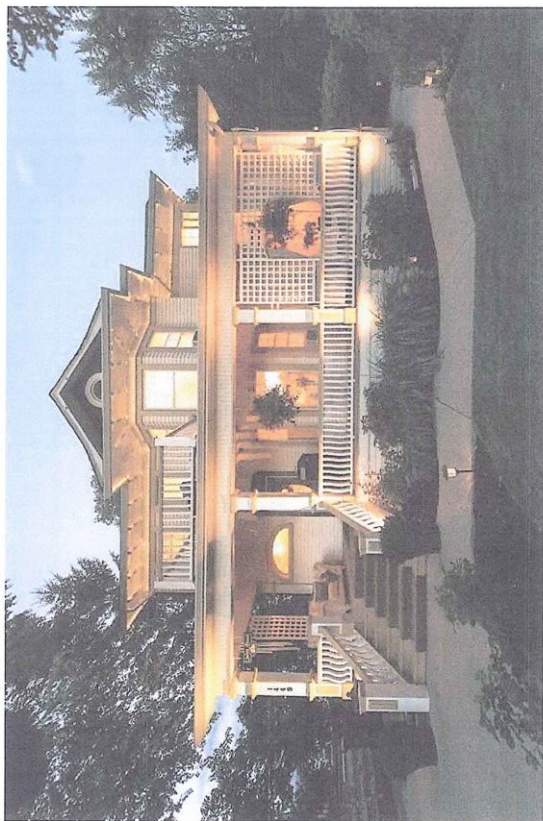
Witness (Signature)

Occupation

SCHEDULE AA
This forms part of application
HRA16-0001

Planner
Initials

City of
Kelowna
COMMUNITY PLANNING



SCHEDULE AA

This forms part of application
HRA16-0001

Planner Initials

City of Kelowna
COMMUNITY PLANNING



Carriage House

SCHEDULE AA
This forms part of application
HRA16-0001

Planner Initials

City of Kelowna
COMMUNITY PLANNING

