

# CITY OF KELOWNA

## BYLAW NO. 11478

**Amendment No. 1 to Bylaw No. 11408 being Heritage Revitalization Agreement Authorization  
Bylaw HRA17-0001 – City of Kelowna and JEM HTB Properties Inc.**

**4629 Lakeshore Road**

---

WHEREAS a local government may, by bylaw, enter into or amend 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 amending the Heritage Revitalization Agreement with JEM HTB Properties Inc. for the property located at 4629 Lakeshore Road, 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 amend Schedule A attached to Bylaw No. 11408 being the Heritage Revitalization Agreement with JEM HTB Properties Inc for the property known as the "Surtees Property" located at 4629 Lakeshore Road, Kelowna, B.C., and legally described as:

Lot A, Section 25, Township 28, SDYD, Plan KAP71341

As outlined in Schedule "B" in the form of such Agreement attached to and forming part of this bylaw.

2. The Mayor and City Clerk are hereby authorized to execute the attached amending 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

Adopted by the Municipal Council of the City of Kelowna this

---

Mayor

---

City Clerk

**SCHEDULE "B"**

**AMENDMENT AGREEMENT**

THIS AGREEMENT dated for reference the                      day of                      , 2017 is

BETWEEN:

**CITY OF KELOWNA**, having an office at 1435 Water Street, Kelowna, British Columbia, V1Y 1J4

(the "City")

AND:

**JEM HTB PROPERTIES INC.** (Inc. No. BC0949919), c/o Pushor Mitchell LLP, 3rd Floor, 1665 Ellis Street, Kelowna, British Columbia, V1Y 2B3

(the "Leasee")

WHEREAS:

- A. The Leasee and the City entered into a heritage revitalization agreement (the "Heritage Revitalization Agreement") to establish terms, conditions and requirements for the use and development of the Heritage Lands and the restoration, renovation, and conservation of the existing Heritage Buildings located thereon;
- B. The parties have agreed to amend the Heritage Revitalization Agreement in accordance with the terms of this Agreement.

NOW THEREFORE, in consideration of the payment of \$1.00 by the Leasee to the City and other good and valuable consideration, the receipt and sufficiency of which the City hereby acknowledges, the Leasee and the City covenant and agree with each other as follows:

- 1. All words and phrases defined in the Heritage Revitalization Agreement and used in this Agreement shall have the same meaning as set forth in the Heritage Revitalization Agreement.
- 2. Section 4.1 of the Heritage Revitalization Agreement is hereby deleted and replaced with the following:
  - 4.1 If one or both of the Heritage Buildings are damaged, the Leasee shall obtain a heritage alteration permit and any other necessary permits and licenses and, in a timely manner, shall restore and repair the Heritage Buildings to the same condition and appearance that existed before the damage occurred.
  - 4.2 If, in the opinion of the City, one or both of the Heritage Buildings are completely destroyed, the Leasee shall construct replicas, using contemporary materials if necessary, of the Heritage Buildings that comply in all respects with the Conservation Plan in Schedule D and with Zoning Bylaw No. 8000, as varied by this Agreement, after

having obtained a heritage alteration permit and any other necessary permits and licenses, and this Agreement will remain in full force and effect.

- 4.3 The Leasee shall use its best efforts to commence and complete any repairs to the Heritage Buildings, or the construction of any replica buildings, with reasonable dispatch.

3. Part 5.0 of the Heritage Revitalization Agreement is hereby deleted in its entirety and replaced with the following:

**5.0 Enforcement of Agreement**

- 5.1 In the event that the Leasee is in breach of any term of this Agreement, the City may give the Leasee notice in writing of the breach and the Leasee shall remedy the breach within 60 days of receipt of the notice, or in the case of a breach that cannot with due diligence be cured within the period of 60 days, the Leasee shall promptly proceed to cure and continue with reasonable diligence to cure such default until the default is cured. The City acknowledges that in consideration of the Leasee performing its obligations under this Agreement and the rent under the lease of the Heritage Lands, the City will only be able to seek recourse in respect of an alleged default by the Leasee under this Agreement by:

- (a) bringing a claim in law against the Leasee for debt or damages, as the case may be, recoverable against the Leasee;
- (b) seeking an order of a Court of competent jurisdiction for specific performance of a mandatory term of this Agreement;
- (c) seeking an order of a Court of competent jurisdiction restraining a continuing breach of this Agreement; or
- (d) pursuing any rights that the City may have under statute in connection with the Heritage Buildings, this Agreement, or the subject matter of the breach, including but not limited to the City seeking recourse in respect to statutory offenses where the breach of this Agreement is also a breach of applicable law,

and the City has no right to cancel or terminate this Agreement so long as the lease of the Heritage Lands by the City to the Leasee, as it may be assigned from time to time, remains in force and effect.

4. All amendments in this Agreement take effect as of the date on which Council for the City of Kelowna adopts the bylaw approving this Agreement.
5. The Leasee affirms and agrees that the Heritage Revitalization Agreement remains unchanged, except as amended herein, and, as amended herein, in full force and effect, time being of the essence, and the Leasee shall perform and observe the covenants, provisos and stipulations in the Heritage Revitalization Agreement as amended herein as fully as if such covenants, provisos and stipulations had been repeated herein in full.

provisos and stipulations had been repeated herein in full.

6. This Agreement may be executed in multiple counterparts, each of which is to be deemed to be an original and all of which together constitute one and the same agreement.

IN WITNESS WHEREOF the Leasee and the City have executed this Agreement as of the date written above.

**CITY OF KELOWNA** by its authorized  
signatories:

\_\_\_\_\_  
Mayor:

\_\_\_\_\_  
City Clerk:

**JEM HTB PROPERTIES INC.** by its authorized  
signatory(ies):

  
Name: Shane Worman

\_\_\_\_\_  
Name: