

CITY OF BURNABY
BYLAW NO. 13842

A BYLAW to authorize a heritage revitalization agreement
for Geoffrey and Kathleen Burnett House

WHEREAS Council has identified the Geoffrey and Kathleen Burnett House (hereinafter referred to as the “Heritage House”) located at 7037 Canada Way, having the legal description:

Parcel Identifier: 006-290-914

Lot A, Except Part in Plan LMP16087, District Lot 30, Group 1, New Westminster District, Plan 73698

(hereinafter referred to as the “Lands”)

as a heritage property;

AND WHEREAS the owners of the Lands have agreed to conserve the Heritage House in good repair and appearance in accordance with, and, upon the subdivision of the Lands, to develop a new single-family dwelling on the newly created vacant lot in accordance with development guidelines as set out in, a heritage revitalization agreement.

NOW THEREFORE the Council of the City of Burnaby ENACTS as follows:

1. This Bylaw may be cited as **BURNABY HERITAGE REVITALIZATION AGREEMENT BYLAW NO. 1, 2018.**

2. The City Clerk is authorized to execute on behalf of the City a heritage revitalization agreement in substantially the same form as that which is attached to and forms part of this Bylaw.

Read a first time this	2018
Read a second time this	2018
Read a third time this	2018
Reconsidered and adopted this	day of 2018

MAYOR

CLERK

HERITAGE REVITALIZATION AGREEMENT

THIS AGREEMENT made the _____ day of _____, 2018 (the “Reference Date”),

BETWEEN:

TADEUSZ KAWECKI
MALGORZATA KAWECKI
7037 Canada Way
Burnaby, B.C. V5E 3R7

(together, the “Owner”)

AND:

CITY OF BURNABY
4949 Canada Way
Burnaby, B.C. V5G 1M2

(the “City”)

WHEREAS:

- A. The Owner is the registered owner in fee simple of the Lands;
- B. The residential building known as the Geoffrey and Kathleen Burnett House (the “**Heritage House**”) is situated on the Lands;
- C. The City and the Owner consider the Heritage House has heritage value and heritage character and should be conserved;
- D. The Owner and the City wish to, *inter alia*, preserve and protect the heritage value of the Heritage House, and to provide certain variances to the *Zoning Bylaw* to allow for the future subdivision and development of the Lands, on the terms and conditions more particularly set out in this Agreement; and
- E. Section 610 of the *Local Government Act* authorizes a local government to enter into a heritage revitalization agreement with the owner of a heritage property, and to allow variations of, and supplements to, the provisions of a bylaw or a permit under Part 14 of the *Local Government Act*;

NOW THEREFORE in consideration of the sum of Ten Dollars (\$10.00) now paid by the City to the Owner and for other good and valuable consideration (the receipt and sufficiency of which the

Owner hereby acknowledges) the Owner and the City, pursuant to Section 610 of the *Local Government Act*, agree as follows:

1. DEFINITIONS

1.1 For the purposes of this Agreement and the recitals thereto:

- (a) "**Agreement**" or "**this Agreement**" means this agreement and includes all recitals and schedules to this agreement and all instruments comprising this agreement;
- (b) "**City**" and "**City of Burnaby**" means the City of Burnaby and is called the "City" when referring to the corporate entity and "City of Burnaby" when referring to the geographic location;
- (c) "**City Personnel**" means the City's elected officials, officers, employees, agents, contractors, licensees, permittees, nominees and delegates, including without limitation, the person or persons appointed as the City's approving officer pursuant to Section 77 of the *Land Title Act*;
- (d) "**Easement Area**" means that portion of Proposed Lot 1 shown shaded on the Proposed Subdivision Guide Plan and identified as "4.57m Private Vehicular Access Easement";
- (e) "**Gross Floor Area**" has the meaning ascribed to it in the *Zoning Bylaw*;
- (f) "**Heritage Designation Bylaw**" has the meaning set out in Section 3.1;
- (g) "**Heritage House**" has the meaning set out in Recital B;
- (h) "**Lands**" means the lands located at 7037 Canada Way, and legally described as:
 - PID: 006-290-914
 - Lot A, Except Part in Plan LMP16087, District Lot 30, Group 1, NWD,
 - Plan 73698;
- (i) "**Owner**" means the registered owner(s) of the Lands, together with any successors in title to the Lands or any portion thereof;
- (j) "**Prime Rate**" means the rate of interest equal to the floating interest rate established from time to time by the Royal Bank of Canada at its main branch in Vancouver, B.C., as the base rate that will be used to determine rates of interest charged by it for Canadian dollar loans to customers in Canada and designated by the Royal Bank of Canada as its prime rate;

- (k) “**Proposed Lot 1**” means that subdivided portion of the Lands shown hatched and identified as “Lot 1” on the Proposed Subdivision Guide Plan;
- (l) “**Proposed Lot 2**” means that subdivided portion of the Lands shown cross hatched and identified as “Lot 2” on the Proposed Subdivision Guide Plan;
- (m) “**Proposed Subdivision Guide Plan**” means the proposed subdivision of the Lands to create Proposed Lot 1 and Proposed Lot 2 as approximately shown in the plan attached hereto as Schedule “A”;
- (n) “**Reference Date**” has the meaning set out on page 1 of this Agreement;
- (o) “**Single Family Dwelling**” has the meaning ascribed to it in the *Zoning Bylaw*; and
- (p) “**Zoning Bylaw**” means the *Burnaby Zoning Bylaw, 1965*, as the same may be amended or replaced from time to time.

1.2 The following Schedules are attached hereto and form part of this Agreement:

<u>Schedule</u>	<u>Description</u>
“A”	Proposed Subdivision Guide Plan
“B”	Development Guidelines and Variances to <i>Zoning Bylaw</i>

2. CONSERVATION OF HERITAGE HOUSE

2.1 The Owner agrees to preserve and protect the Heritage House, keeping it in good repair and in good appearance.

2.2 The Owner agrees that no works will be done or permitted that would alter the exterior appearance or change the exterior building materials of the Heritage House, including any potential future reconstruction of the original north verandah, unless such works have been approved in writing by the City pursuant to a heritage alteration permit issued by the City in accordance with Section 617 of the *Local Government Act*.

2.3 The Owner agrees to undertake the ongoing maintenance and care of the Heritage House to ensure its ongoing good condition and appearance as directed by the City.

3. HERITAGE DESIGNATION

3.1 The Owner irrevocably agrees to the designation by bylaw (the “**Heritage Designation Bylaw**”) of the Lands and the Heritage House as a City heritage site, in accordance with Section 612

of the *Local Government Act*, and releases the City from any obligation to compensate the Owner in any form for any reduction in the market value of the Lands that may result from such designation.

3.2 The Owner acknowledges that notice of this Agreement and amendments thereto, and of the Heritage Designation Bylaw, will be registered on title to the Lands in the Land Title Office and once registered, this Agreement and amendments thereto will be binding on all persons who acquire an interest in the Lands.

4. DEVELOPMENT GUIDELINES AND VARIANCES TO ZONING BYLAW FOR FUTURE DEVELOPMENT OF THE LANDS

4.1 The City agrees that if the Owner applies to subdivide the Lands on the basis of the Proposed Subdivision Guide Plan, and to develop the lots created thereby, the City will review and consider such subdivision application and development proposal taking into account the development guidelines and variances to the *Zoning Bylaw* as set out in Schedule "B" attached hereto.

4.2 The Owner acknowledges and agrees that, except as expressly varied by this Agreement, any development, subdivision or use of the Lands will be at the discretion of the City, including City Council and the City's Approving Officer, and be subject to, and must comply with, all applicable federal, provincial and municipal statutes, regulations and bylaws, including without limitation, the *British Columbia Building Code*, the *Zoning Bylaw*, and all other City bylaws, regulations and requirements.

5. CITY'S RIGHT TO INSPECT AND ENFORCE

5.1 Without limiting the City's power of inspection conferred by statute and in addition to that power, the City may, at all reasonable times and upon reasonable notice to the Owner, enter onto the Lands from time to time for the purpose of ensuring that the Owner is fully observing and performing all of the restrictions and requirements in this Agreement to be observed and performed by the Owner, and carrying out all work in compliance with Section 4.2 of this Agreement.

5.2 In addition to any remedies available to the City under the *Local Government Act*, if the Owner defaults in observing or performing any obligation under this Agreement, the Owner will rectify such default within 30 days after receipt of notice from the City, except that if the Owner, by reason of the nature of the default, cannot in the opinion of the City, rectify such default within 30 days, the Owner will have a further reasonable period to rectify so long as the Owner proceeds promptly and diligently. If the Owner fails to rectify such default within the permitted time period or if the City, in case of emergency, does not consider that it has time to deliver such notice, the City may rectify the default on the Owner's behalf, although the City will be under no obligation to do so. If any default by the Owner results in the need for the Owner to take positive action to rectify such default, the Owner will take such positive action as the City considers necessary, and if the Owner fails to do so, the City may apply to court for a mandatory injunction requiring the Owner to take such action.

5.3 The Owner will pay to the City on demand the aggregate of all of the City's costs and expenses of rectifying any default of the Owner, plus a sum equal to 20% of those costs and expenses on account of the City's overhead, plus any other amounts the Owner may owe to the City from time to time pursuant to this Agreement. If the Owner does not pay the City within 30 days after the date the Owner receives demand from the City, the arrears will bear interest from the date of demand to the date of payment at the Prime Rate plus 3% per annum, calculated and compounded monthly not in advance. If any amounts due and owing by the Owner to the City pursuant to this Section 5.3 are unpaid on the 31st day of December in the year such amounts came due, the City may, without limiting the City's other remedies, add such amounts to the taxes payable in respect of the Lands as taxes in arrear.

6. RELEASE AND INDEMNITY

6.1 The Owner hereby agrees to waive, remise, release, discharge, indemnify and save harmless absolutely the City and all City Personnel from and against all damages, losses, costs (including legal costs on a solicitor-and-client basis), actions, causes of action, claims, demands, liabilities, indirect or consequential damages (including loss of profit, loss of use, and damages arising out of delays) and expenses of every nature or kind whatsoever which may arise or accrue to the Owner or any person, firm or corporation against the City or any City Personnel arising out of or in connection with, directly or indirectly, or that would not or could not have occurred "but for" this Agreement, including without limitation:

- (a) the design, construction and maintenance activities of the Owner or its servants, agents, contractors or subcontractors arising directly or indirectly from compliance with the restrictions or requirements set out in this Agreement;
- (b) any breach by the Owner of any covenant or agreement contained in this Agreement;
- (c) any failure of the City to enforce or require compliance by the Owner with the restrictions or requirements in this Agreement, or with any other term, condition or provision of this Agreement; or
- (d) the grant or exercise of the rights granted to the City under this Agreement.

7. MISCELLANEOUS

7.1 No Fettering and No Derogation. Nothing contained or implied in this Agreement will fetter in any way the discretion of the City or the Council of the City. Further, nothing contained or implied in this Agreement will derogate from the obligations of the Owner under any other agreement with the City or, if the City so elects, prejudice or affect the City's remedies under any law or in equity, or the City's rights, powers, duties or obligations in the exercise of its functions pursuant to the *Community Charter* or the *Local Government Act*, as amended or replaced from time to time, or act to fetter or otherwise affect the City's discretion, and the rights, powers, duties and obligations of the City under all public and private statutes, by-laws, orders and regulations,

which may be, if the City so elects, as fully and effectively exercised in relation to the Lands as if this Agreement had not been executed and delivered by the Owner and the City.

7.2 City's Costs. The Owner acknowledges and agrees that in any action to enforce this Agreement in which any court determines that the position of the City will prevail, the City will be entitled to any court costs on a solicitor and client basis.

7.3 Notices. Any notice or communication required or permitted to be given pursuant to this Agreement will be in writing and delivered by hand or sent by prepaid mail or facsimile to the party to which it is to be given as follows:

- (a) to the City:

City of Burnaby
4949 Canada Way
Burnaby, B.C., V5G 1M2

Attention: City Clerk
Fax: 604 294 7537

with a copy to the Director Planning and Building and the City Solicitor; and

- (b) to the Owner, to the address as set out on the title for the Lands,

or to such other address or fax number as any party may in writing advise. Any notice or communication will be deemed to have been given when delivered if delivered by hand, two business days following mailing if sent by prepaid mail, and on the following business day after transmission if sent by facsimile.

7.4 Interpretation. The following provisions apply to this Agreement:

- (a) the laws of the Province of British Columbia are to govern its interpretation and enforcement;
- (b) each of the City and Owner accepts and attorns to the jurisdiction of the courts of the Province of British Columbia;
- (c) if a court of competent jurisdiction finds any provision invalid, illegal, or unenforceable, and severs it from the remainder of this Agreement, the remaining provisions of this Agreement are to remain in full force and effect;
- (d) time is of the essence, and if the City or Owner expressly or impliedly waives that requirement, the City or Owner may re-instate it by delivering notice to the other;

- (e) waiver of a default by the City or Owner or failure or delay by the City or Owner in exercising a right or remedy or enforcing the covenants contained herein does not mean that the City or Owner waives any other default or that the City or Owner has waived its right to exercise such right or remedy or enforce such covenants;
- (f) any waiver of a default will only be effective and binding if made in writing and signed by the waiving party and will only apply to the particular breach, violation or other matter waived and will not apply to or extend to any other or subsequent breach, violation or other matter, notwithstanding any rule of law or equity to the contrary;
- (g) no amendment or modification is to have any force or effect unless the City and Owner have signed it;
- (h) this Agreement represents the entire agreement between the City and Owner regarding the matters set out in this Agreement, and supersedes all prior agreements, letters of intent, or understandings about such matters;
- (i) any reference to a statute is to the statute and the regulations made pursuant thereto in force on the Reference Date, and to subsequent amendments to or replacements of the statute or regulations;
- (j) the captions and headings appearing in this Agreement have been inserted as a matter of convenience and for reference only and in no way define, limit or enlarge the scope or meaning of this Agreement or any of the provisions hereof;
- (k) wherever the singular or feminine is used in this Agreement, it will be construed as meaning the plural or masculine or body corporate where the context so requires;
- (l) the exercise of any particular remedy by the City or Owner under this Agreement or at law or in equity will not prejudice or preclude that party from invoking or exercising any other remedy, and no remedy will be exclusive, and each of the City or Owner may exercise all its remedies independently or in combination and, in particular, the Owner acknowledges that specific performance, injunctive relief (mandatory or otherwise), or other equitable relief may be the only adequate remedy for a default by the Owner under this Agreement;
- (m) the City and Owner will do and cause to be done all things and execute and cause to be executed all documents, instruments and agreements that may be necessary to give proper effect to the intention of this Agreement; and

- (n) if the Owner consists of more than one person, firm, or corporation, the Owner's obligations under this Agreement will be joint and several.

7.5 Enurement. The covenants contained in this Agreement will enure to the benefit of and be binding upon the Owner and its executors and trustees, and this Agreement will enure to the benefit of and be binding upon the City and its successors and assigns. This Agreement will charge and run with the Lands and enure to the benefit of and be binding upon the owners from time to time of the Lands and all parties claiming through such owners and their respective heirs, executors, administrators, trustees and successors, as applicable.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Reference Date.

TADEUSZ KAWECKI

MALGORZATA KAWECKI

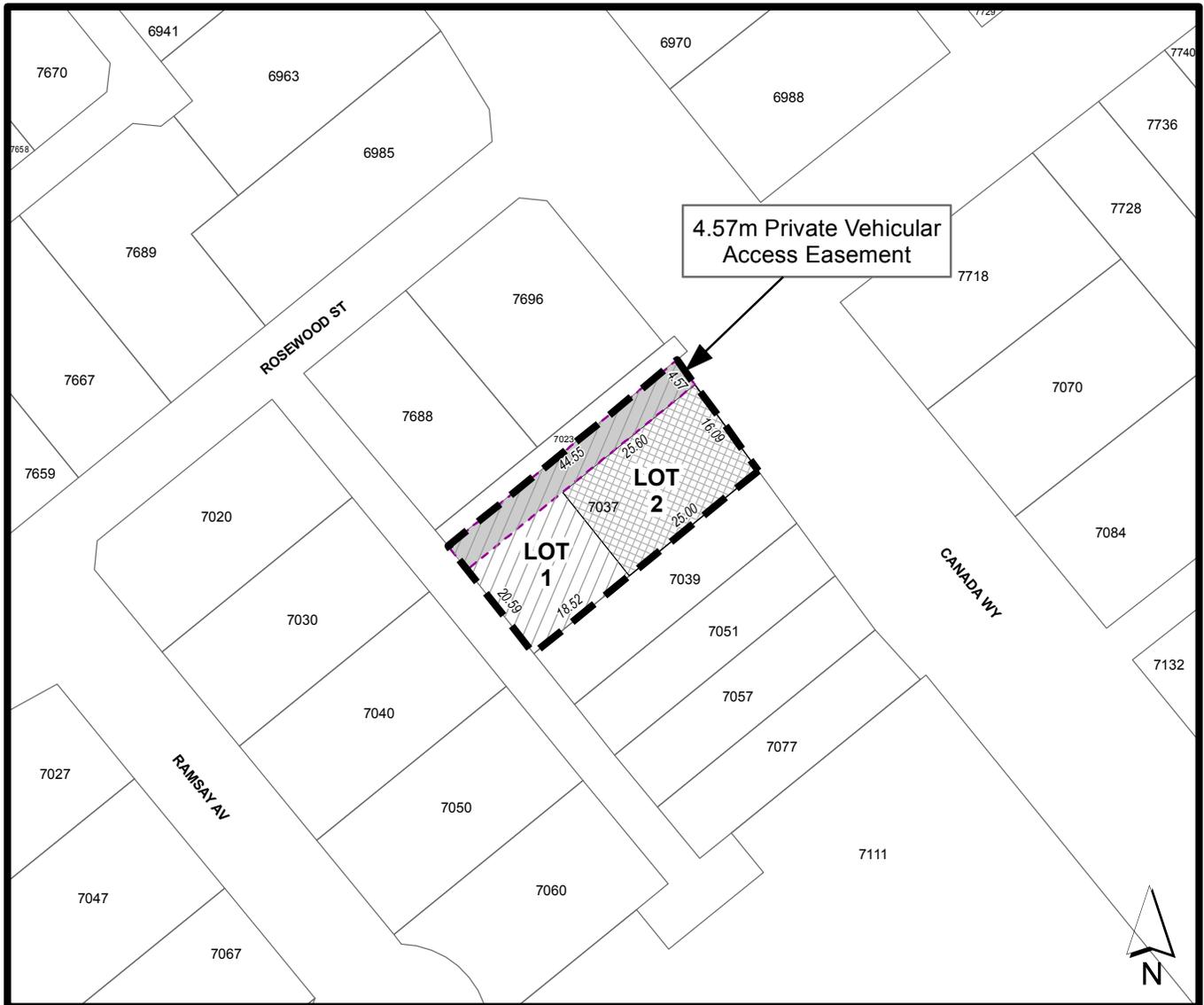
CITY OF BURNABY, by
its authorized signatory:

Name:

Title:

BYLAW NUMBER 13842 BURNABY HERITAGE REVITALIZATION
 AGREEMENT BYLAW NUMBER 1, 2018 - BYLAW NUMBER 13842

LEGAL: PID: 006-290-914
 LOT A, EXCEPT PART IN PLAN LMP16087,
 DISTRICT LOT 30, GROUP 1, NWD, PLAN 73698



	PLANNING AND BUILDING DEPARTMENT	
Date: MAR 02 2018 scale: 1:1,000	SUBDIVISION GUIDE PLAN	
Drawn By: AY	 Lot 1  Lot 2 (Existing Heritage House)	SCHEDULE "A"

SCHEDULE "B"

Development Guidelines and Variances to Zoning Bylaw

A. Proposed Lot 1

1. The required setbacks for a Single Family Dwelling constructed on Proposed Lot 1 may be reduced to:
 - (a) 5.0 metres for the front yard; and
 - (b) 6.0 metres for the rear yard.
2. The maximum achievable lot coverage on Proposed Lot 1 given the required front, rear and side yard setbacks will be approximately 28%, which will allow for a building envelope of approximately 210 square metres (or 2,260.41 square feet), subject to the submission of an up-to-date survey to the City's Planning and Building Department at the time of subdivision application. The maximum Gross Floor Area permitted can be achieved through the inclusion of a basement.
3. Either a parking pad, or the inclusion of a garage or carport not to exceed 42 square metres (or 452.1 square feet) into the envelope of a Single Family Dwelling on Proposed Lot 1, will be permitted on Proposed Lot 1, provided such parking pad, garage or carport is located outside the Easement Area that provides lane access for Proposed Lot 2.
4. Vehicular access to and from Proposed Lot 1 may be taken from the lane or from the Easement Area. An easement over the Easement Area in favour of Proposed Lot 2 (to be registered on title to Proposed Lot 1) together with a Section 219 Covenant (to be registered on title to Proposed Lot 1 and Proposed Lot 2) in favour of the City, will be required to ensure the Easement Area is retained for vehicle access purposes.
5. The panhandle portion of Proposed Lot 1 is to be 4.57 metres (or 15.0 feet) wide.
6. Any proposed Single Family Dwelling on Proposed Lot 1 must meet all spatial separation requirements as outlined in the *British Columbia Building Code*.
7. The existing structure located on Proposed Lot 1 as of the Reference Date must be removed prior to final approval of any subdivision of the Lands.
8. In all other respects, any new development on Proposed Lot 1 will be required to comply with the *Zoning Bylaw*.

B. Proposed Lot 2

1. The maximum Gross Floor Area permitted on Proposed Lot 2 is 343.5 square metres (or 3,697.39 square feet), which is based on a survey of the existing Heritage House. The maximum above grade Gross Floor Area (AGFA) permitted on Proposed Lot 2 is 238.40 square metres (or 2,566.11 square feet), notwithstanding the AGFA allowable under the *Zoning Bylaw*.
2. The required rear yard setback for the Heritage House on Proposed Lot 2 may be reduced to 5.5 metres, provided further that a rear deck may encroach into the rear yard up to 3.0 metres from the rear property line.
3. The Owner must provide an off-street parking area within Proposed Lot 2. For certainty, such off-street parking area may not be located within the Easement Area.
4. Vehicular access to and from Proposed Lot 2 to the lane will be restricted to the Easement Area. An easement over the Easement Area in favour of Proposed Lot 2 (to be registered on title to Proposed Lot 1) together with a Section 219 Covenant (to be registered on title to Proposed Lot 1 and Proposed Lot 2) in favour of the City, will be required to ensure the Easement Area is retained for vehicle access purposes.
5. The City will permit the future conversion of the existing basement crawl space measuring 52.8 square metres (or 568.3 square feet) in the Heritage House to living space.
6. In all other respects, any development on Proposed Lot 2 will be required to comply with the *Zoning Bylaw*.