

CITY OF SURREY

BY-LAW NO. 13194

A by-law to enter into a heritage revitalization agreement
.....

WHEREAS:

A. The Council may by by-law pursuant to Part 27 of the Municipal Act, R.S.B.C. 1996, Chapter 323 enter into a heritage revitalization agreement with the owner of heritage property.

B. The Council considers that certain lands and premises situate within the City described as:

Parcel "A" (Explanatory Plan 5703) of the South 50 Acres of the West Half of the North West Quarter, Section 27, Township 8, New Westminster District

8534 - 192 Street
(the "Lands")

have heritage value and ought to be conserved.

C. The Owner (as defined in the Heritage Revitalization Agreement) of the Lands and the City of Surrey have agreed on the nature, character and extent of the heritage value of the Lands and on the nature, extent and form of conservation necessary to protect the heritage value.

NOW THEREFORE the City Council of the City of Surrey, in open meeting assembled, enacts as follows:

1. The City Council is authorized hereby to enter into that certain Heritage Revitalization Agreement including Schedule "A" and "B" attached and hereto appended to this By-law as Schedule "1," (the "Heritage Revitalization Agreement") in respect of the Lands.

2. The Mayor and the City Clerk are authorized on behalf of the Council to sign and seal the Heritage Revitalization Agreement.
3. Schedule "1" forms a part of this By-law.
4. This By-law may be cited for all purposes as "City of Surrey Heritage Revitalization Agreement By-law, 1997, No. 13194."

READ A FIRST AND SECOND TIME on the 21st day of July, 1997.

PUBLIC HEARING HELD thereon on the 16th day of September, 1997.

READ A THIRD TIME on the 1st day of September, 1998.

RECONSIDERED AND FINALLY ADOPTED, signed by the Mayor and Clerk, and sealed with the Corporate Seal on the 8th day of September, 1998.

_____ MAYOR
_____ CLERK

SCHEDULE "1"

[To City of Surrey Heritage Revitalization Agreement By-law, 1997, No. 13194]

HERITAGE REVITALIZATION AGREEMENT

This Agreement made the _____ day of _____, 1997

BETWEEN:

FRANK R. LITCHFIELD and
JUDITH D. LITCHFIELD

(the "Owner")

OF THE FIRST PART

AND:

CITY OF SURREY, a municipal corporation by
letters patent pursuant to the Municipal Act, and
having offices at Surrey, British Columbia,

(the "City")

OF THE SECOND PART

WHEREAS:

- A. The Owner is the registered owner in fee simple of the following lands and premises situate in the City of Surrey, British Columbia and described as :

Parcel "A" (Explanatory Plan 5703) of the South 50 Acres of the West Half of the North West Quarter, Section 27, Township 8, New Westminster District

8534 - 192 Street

(the "Lands")
- B. The City and the Owner consider that the Lands have *heritage value*;
- C. The City and the Owner desire to conserve those improvements on and the *heritage character* of the Lands which collectively constitute such *heritage value*;
- D. For the purpose of *conservation* of the *heritage value* of the Lands, the Owner and the City have agreed to enter into this Agreement setting out the terms and conditions of continuing protection for the *heritage value* of the Lands;

- E. That portion of the Lands which both the Owner and the City desire to conserve and which constitute the *heritage value* shall be termed the "Heritage Grounds".
- F. The improvements on and *heritage character* of the Heritage Grounds have been described by text, photographs and plans attached as Schedule "A" (the "Conservation Plan") to this Agreement.
- G. The single family dwelling identified as the Latimer Residence on the Conservation Plan is listed on the Surrey Heritage Register;

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the mutual premises of the parties hereto and for other good and valuable consideration (the receipt and sufficiency of whereof is hereby by the parties acknowledged) the Owner and the City covenant and agree with one another pursuant to Section 966 of the Municipal Act, R.S.B.C., 1996, Chapter 323, as amended (the "Municipal Act"), as follows:

Conservation Plan

- 1. (a) The Conservation Plan forms a part of this Agreement and to the extent that the text, photographs and plans constituting the Conservation Plan require interpretation, the City shall determine the matter and Section 15 of this Agreement shall apply.
- (b) Part I of the Conservation Plan identifies, details and describes the character, extent and nature of the improvements on the Heritage Grounds that have *heritage value*, and any specific *heritage character*. Part II of the Conservation Plan provides for the timing and phasing of, and sets out standards and specifications for, restoration, rehabilitation, replication, or repair to be undertaken and completed pursuant to this Agreement. Part III of the Conservation Plan sets out restrictions, requirements, guidelines and exemptions for the *conservation* and maintenance of all improvements and features on the Heritage Grounds having *heritage value*.

Owner's Obligations to Conserve and Maintain

- 2. The Owner covenants and agrees that:
 - (a) no improvement on the Heritage Grounds identified in the Conservation Plan as having *heritage value* or a part of the *heritage character* of the Heritage Grounds shall be *altered* including alterations required or authorized by this Agreement, except as agreed to by the City;
 - (b) each action of restoration, rehabilitation, replication, repair or maintenance, required by Part II of the Conservation Plan, shall be commenced and completed in accordance with the phasing, timing, standards and specifications set out in Part II of the Conservation Plan;

- (c) all improvements identified in Part I of the Conservation Plan as having *heritage value* shall be maintained to the minimum standards and in accordance with the guidelines and requirements set out in Part III of the Conservation Plan;
- (d) all those undeveloped areas of the Heritage Grounds as outlined in heavy black dotted line on the "Site Plan" forming part of the Conservation Plan, being lands in the opinion of the City necessary for the *conservation* of proximate improvements, identified in the Conservation Plan as having *heritage value* shall continue to remain free of all development and shall be kept in their landscaped and cultivated state, as required in and in accordance with the guidelines set out in Part III of the Conservation Plan, and without limiting the generality of the foregoing, the elevation and configuration of the land and terrain shall not be altered, and no trees or landscaping shall be removed or cut, except for reasonable pruning and grooming;
- (e) the restrictions and requirements pertaining to any buildings or structures located within the Heritage Grounds are limited to the structure and exterior;
- (f) the Owner shall do or cause to be done all such things, and shall take or cause to be taken all such actions as are necessary to ensure that the restrictions and requirements provided in Subsections (a), (b), (c), (d), and (e) of this Section 2 are fully observed, and the Owner shall not do, cause or allow to be done anything that would be in breach of the restrictions herein.

Variation of By-laws

3. Pursuant to Section 966(2) (b) of the Municipal Act, the following by-laws of the City are varied and supplemented in their application to the Lands in the manner and to the extent provided as follows:
 - (a) The RA One-Acre Residential Zoning Schedule of City of Surrey Zoning By-law, 1993, No. 12000, as amended, is hereby varied and supplemented as to the Lands as follows:
 - (i) by varying Part 12, Section B.1 to permit a second single family dwelling on the Lands as set out in Schedule "B" which is incorporated hereto and forms part of this Agreement;
 - (ii) by varying Part 12, Section B.5 to prohibit bed and breakfast use and the keeping of boarders or lodgers for the Latimer Residence located within the Heritage Grounds identified on the "Site Plan" forming part of the Conservation Plan.

Construction and Maintenance of Works

4. Wherever in this Agreement the Owner restores, rehabilitates, replicates, repairs, replaces, maintains, or in any way *alters* improvements on, or features of the Heritage Grounds identified in the Conservation Plan as having *heritage value*, or constructs or maintains other works to protect or conserve such improvements or features, all such work shall be done at the Owner's sole expense strictly in accordance with the Conservation Plan and as agreed by the City and all plans and specifications forming part thereof shall be diligently and continuously maintained in good repair and efficient operating condition by the Owner at the Owner's sole expense in accordance with good engineering, design, heritage and *conservation* practice.

No Liability to City

5. In no case shall the City be liable or responsible in any way for:
 - (a) any personal injury, death or consequential damage of any nature whatsoever, howsoever caused, that be suffered or sustained by the Owner or by any other person who may be on the Lands; or
 - (b) any loss or damage of any nature whatsoever, howsoever caused to the Lands or any improvements or personal property thereon belonging to the Owner or to any other person;

arising directly or indirectly from compliance with the restrictions and requirements herein, wrongful or negligent failure or omission to comply with restrictions and requirements herein, or refusal, omission or failure of the City to enforce or require compliance by the Owner with the restrictions or requirements herein or with any other term, condition or provision of this Agreement.

Reasonable Care and Risk

6. The Owner shall at all times, in complying with the restrictions or requirements herein and their obligations in respect thereof, take reasonable care not to injure any person or cause or allow damage to any property, and shall take reasonable care not to cause, suffer, permit or allow any condition to exist that might reasonably lead to, cause or result in injury to any person or property including persons and property on adjacent lands. It shall be the sole responsibility of the Owner to comply and maintain compliance with the restrictions and requirements herein in a safe manner, and without reasonably foreseeable risk to person or property as aforesaid. Compliance with the restrictions and requirements in this Agreement shall be at the sole and exclusive risk of the Owner.

Modification

7. If, in fulfilling its responsibilities and obligations pursuant to this Agreement, the Owner perceives or becomes aware of any unreasonable risk of injury to persons or damage to property or other potential loss that cannot be reasonably avoided, alleviated, reduced or eliminated except by measures that would be a breach of the restrictions, requirements or its obligations herein, the Owner shall notify the City in writing of the nature and extent of the risk and of the measures proposed by the Owner to be undertaken at its sole cost to reduce, alleviate, avoid or eliminate the risk. Risk shall remain with the Owner.

Indemnity

8. The Owner shall at all times indemnify and save harmless the City of and from all loss and damage, and all actions, claims, costs, demands, expenses, fines, liabilities and suits of any nature whatsoever by whomsoever brought for which the City shall or may become liable, incur or suffer by reason of existence and effect whether direct or indirect of the restrictions or requirements herein, or breach or non-performance by the Owner of any covenant, term or provision hereof, or by reason of any work or action of the Owner in performance of its obligations hereunder, or by reason of any wrongful act or omission, default or negligence of the Owner.

Alternative Remedies

9. Any performance by the City pursuant to a statutory right to perform the obligations of an Owner arising out of this Agreement may be exercised fully in accordance with the Municipal Act, and shall be without prejudice to any and all other remedies at law and equity available to the City, and no reference herein to, or exercise of any specific right or remedy by the City, shall preclude the City from exercising any other right or remedy.

Damages

10. The Owner covenants and agrees that the measure of damages for any breach of the restrictions or requirements of this Agreement shall include, but shall not be limited to, the actual cost and expense of all administration, labour, materials, equipment, services and work required for all remedial acts necessary to fully restore, rehabilitate, replace or maintain the building, structure, improvements on or feature of the Lands having *heritage value* to be protected, conserved, preserved or kept in its natural state. The nature and extent of any breach of the said restrictions and requirements, and the nature and extent of any restoration, rehabilitation, replacement, maintenance or remedial work or action of any nature required to remedy such breach shall be determined by the City by reference to the Conservation Plan, and Sections 2 and 3 of this Agreement.

No Waiver

11. No restrictions, requirements or other provisions in this Agreement shall be deemed to have been waived by the City unless a written waiver authorized by

resolution of the Council and signed by an officer of the City has first been obtained, and without limiting the generality of the foregoing, no condoning, excusing or overlooking by the City on previous occasions of any default nor any previous written waiver shall be taken to operate as a waiver by the City of any subsequent default or in any way to defeat or affect the rights of remedies to the City.

Statutory Authority and Proprietary Rights

12. Nothing in this Agreement shall limit, impair, fetter, or derogate from the statutory powers of the City all of which powers may be exercised by the City from time to time and at any time to the fullest extent that the City is enabled and no permissive by-law enacted by the City, or permit, license or *approval*, granted, made or issued thereunder, or pursuant to statute, by the City shall estop, limit or impair the City from relying on and enforcing this Agreement in its proprietary capacity as the owner of an interest in the Lands.

Compliance with Laws

13. Despite any provision of this Agreement, the Owner shall comply with all laws, including by-laws of the City and all regulations and orders of any authority having jurisdiction, and to the extent only that such laws, regulations and orders are mandatory and necessarily require the breach of any restriction or positive obligation herein to be observed or performed by the Owner, or less than strict compliance with the terms hereof, then the Owner upon sixty (60) days' written notice to the City shall be excused from complying with such restrictions or performing such obligation and such restriction or obligation shall be suspended but only to the extent and for the time that such mandatory law, regulation or order is inconsistent with compliance with the said restrictions or obligations.

Notice

14. Any notice to be given hereunder shall be in writing and may be either delivered personally or sent by prepaid registered mail and if so mailed shall be deemed to have been given five (5) days following the date upon which it was mailed. The address of the parties for the purpose of notice shall be as follows:

If to the City:

Attention: City Clerk
City of Surrey
14245 - 56 Avenue
Surrey, B.C. V3X 3A2

If to the Owner:

Attention: Frank R. Litchfield and Judith D. Litchfield
8534 - 192 Street
Surrey, B.C. V4N 3G5

Any party hereto may at any time give notice in writing to the other of any change of address and after the third day of giving of such notice, the address therein specified shall be the address of such party for the giving of notices hereunder.

Arbitration

15. The Owner, if dissatisfied with the City's interpretation of the Conservation Plan and any determination pursuant to Section 1(a) of this Agreement may require that the matter be decided and determined by binding arbitration as follows:
 - (a) The Owner must, within fourteen (14) days of any exercise of discretion by the City, give notice to the City of its intention to dispute and in such notice shall name a member in good standing of the Architectural Institute of British Columbia who has agreed to act as an arbitrator;
 - (b) the City shall within fourteen (14) days of receipt of the aforesaid notice either accept the Owner's arbitrator, or name another with the same qualifications willing to act, and shall give notice of the same to the Owner;
 - (c) where each of the Owner and the City have named an arbitrator, the two arbitrators shall within fourteen (14) days of the City's notice pursuant to this Section 15(b) appoint a third arbitrator having the same qualifications and the three arbitrators shall decide the dispute;
 - (d) where the City accepts the arbitrator first selected by the Owner, that arbitrator shall act as a single arbitrator and forthwith decide the dispute;
 - (e) any arbitrator's decision in respect of the exercise of a discretion by the City shall be final, conclusive and binding on all parties.

16. Without limiting the City's power of inspection conferred by statute and in addition thereto, the City shall be entitled at all reasonable times and from time to time to enter onto the Lands 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 wherever possible, when an inspection of the lands is undertaken, the City shall provide reasonable notice to the Owner.

Headings

17. The headings in this Agreement are inserted for convenience only and shall not affect the construction of this Agreement or any provision hereof.

Schedules

18. All schedules to this Agreement are incorporated into and form part of this Agreement.

Number and Gender

19. Whenever the singular or masculine or neuter is used in this Agreement, the same shall be construed to mean the plural or feminine or body corporate where the context so requires.

Interpretation

20. Terms used in this Agreement that are italicized are defined in the Municipal Act, and the Heritage Conservation Act, R.S.B.C., 1996, Chapter 187, as amended, and shall take their meaning from that Act.

Successors Bound

21. All restrictions, rights and liabilities herein imposed upon or given to the respective parties shall extend to and be binding upon their respective heirs, executors, administrators, successors and assigns. When the Owner is more than one party they shall be bound jointly and severally by the terms, covenants and agreements herein on the part of the Owner.

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

Signed, Sealed and Delivered)
by F.R. LITCHFIELD AND)
J.D. LITCHFIELD)
in the presence of:)
)
)
_____))
Name)
)
_____))
Address)
_____))
)
_____))
)
_____))
Occupation)

_____))
Name)
)
_____))
Name)

The Corporate Seal of)
CITY OF SURREY)
was hereunto affixed in the)
presence of:)
)
_____))
Mayor)
)
_____))
Clerk)

(C/S)

[Notice of this Agreement and amendments to it will be filed in the Land Title Office and once filed, this Agreement and amendments will be binding on all persons who acquire an interest in the Lands].

SCHEDULE "A"

Conservation Plan

Part I

This property was part of a Crown Grant in 1879 to John Latimer, a pioneer settler on the east side of Surrey and a member of the second Council after whom Latimer Creek, Latimer Hill and Latimer Road (192 Street) are named. The Latimer Residence, identified on the attached "Site Plan" and photographs, is a single-storey wood frame house built c. 1928. The landscaping surrounding the Residence consists of mature trees and bushes, including maple and a sawtooth oak tree. Latimer Creek runs parallel to the north property line, and cuts through the north-east and north-west corners of the Lands. The Residence is located about 12 metres from the top of the bank of the Creek. There is a steep slope leading down to the Creek's floodplain. Both the Creek and the bank remain in their natural state. A row of large fir and spruce trees stands at the rear of the Residence. These trees follow the top of the bank of Latimer Creek alongside the driveway.

Part II

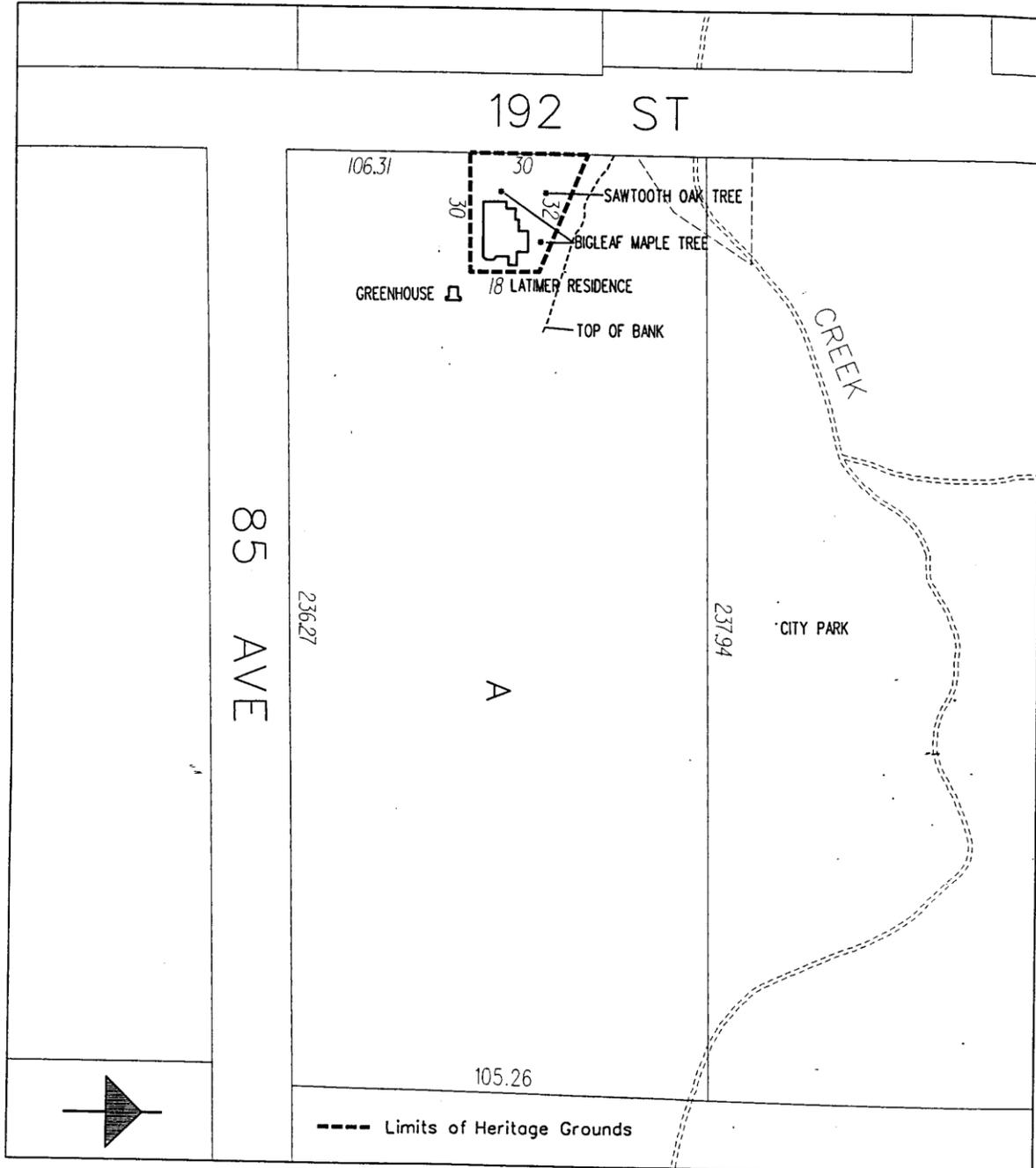
The Latimer Residence requires replacement of wood trim along the roof edges and painting as part of this Agreement. This restoration shall be completed within one (1) year of the signing of this Agreement. It should be painted with colours that are in keeping with its historical style.

Part III

Wherever possible, original exterior features of the Latimer Residence shall be retained. If any 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 exterior features shall complement the building's heritage style. The Latimer Residence shall be maintained to prevent water intrusion and damages from sun, wind and other infestations. This includes the replacement of roofing when necessary, and painting to protect exterior features. Colours shall be in keeping with the historical style of the building, and trim should be painted white. If the Latimer Residence is damaged, it shall be repaired promptly. If the Latimer Residence is more than 50% destroyed, it shall not be reconstructed.

The Heritage Grounds, the original historic character of the area shall be maintained in its original or natural state as outlined on the attached "Site Plan".

Site Plan of Latimer Residence and Heritage Grounds:



Photographs of Latimer Residence:



Residence as seen from 192 Street, with big leaf maple located at left and right and sawtooth oak at centre. Bank of creek located immediately to the left of the driveway.



Front of Residence



Front and south side of Residence

Photographs of Latimer Residence and Surrounding Yard:



Rear of Residence

SCHEDULE "B"

- I. City of Surrey Zoning By-law, 1993, No. 12000, as amended, is hereby varied for the subject lands with respect to the One-Acre Residential Zone (RA) as follows:

Part 12, Section B: Permitted Uses

1. Two single family dwellings.
2. Bed and Breakfast, and boarders or lodgers shall not be permitted in the dwelling located within the Heritage Grounds outlined on the attached "Site Plan".

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