

EXPLANATION**A By-law to amend the Downtown Official
Development Plan By-law re density**

After the public hearing on September 8, 2009, Council resolved to amend the D ODP By-law to remove the requirement that office use must not exceed a floor space ratio of 5.00. The Director of Planning has advised that there are no prior-to conditions, and enactment of the attached by-law will implement Council's resolution.

Director of Legal Services
September 22, 2009

Density



BY-LAW NO. _____

**A By-law to amend
Downtown Official Development Plan By-law No. 4912
regarding an increase in permitted office density**

THE COUNCIL OF THE CITY OF VANCOUVER, in public meeting, enacts as follows:

1. ~~From subsection (1) of Section 3 of By-law No. 4912, in the paragraph beginning with "H", Council strikes out the first bullet followed by "office use must not exceed a floor space ratio of 5.00, and".~~
2. This By-law is to come into force and take effect on the date of its enactment.

ENACTED by Council this _____ day of _____, 2009

Mayor

City Clerk

EXPLANATION

**A By-law to amend CD-1 By-law No. 9693
re 2900 East Broadway**

After the public hearing on September 8, 2009, Council resolved to amend CD-1 By-law No. 9693 regarding the Broadway Tech Centre to add certain uses. The Director of Planning has advised that there are no prior-to conditions, and enactment of the attached by-law will implement Council's resolution.

Director of Legal Services
September 22, 2009

2900 East Broadway

BY-LAW NO. _____



A By-law to amend CD-1 By-law No. 9693

THE COUNCIL OF THE CITY OF VANCOUVER, in public meeting, enacts as follows:

1. This By-law amends the indicated provisions of CD-1 By-law No. 9693.
2. ~~Council repeals section 3.2(d), and substitutes:~~

“(d) Office Uses, limited to Desktop Publishing, Information Technology, Financial Institution, Health Care Office, Health Enhancement Centre, and General Office;”.
3. From the first line of section 5.3, Council strikes out “general”.
4. A decision by a court that any part of this By-law is illegal, void, or unenforceable severs that part from this By-law, and is not to affect the balance of this By-law.
5. This By-law is to come into force and take effect on the date of its enactment.

ENACTED by Council this _____ day of _____, 2009

Mayor

City Clerk

EXPLANATION**2010 Real Property Tax Interest on Arrears**

The attached by-law will implement Council's resolution of September 8, 2009 to set the interest rate for delinquent real property taxes for 2010 at 6.25%.

Director of Legal Services
September 22, 2009

BY-LAW NO. _____



**A By-law to provide for the imposition of interest
on delinquent property taxes for 2010**

THE COUNCIL OF THE CITY OF VANCOUVER, in public meeting, enacts as follows:

1. The name of this By-law, for citation, is the "2010 Real Property Tax Interest By-law".
2. All real property taxes that are or become delinquent after December 31, 2009 are to bear interest at the rate of 6.25% per annum compounded annually.

3. This By-law is to come into force and take effect on the date of its enactment.

ENACTED by Council this _____ day of _____, 2009

Mayor

City Clerk

EXPLANATION**Authorization to enter into a
Heritage Revitalization Agreement
with the owner of 431 Helmcken Street**

After the public hearing on September 8, 2009, Council resolved to enter into a by-law to authorize an agreement with the owner of the property at 431 Helmcken Street pursuant to Section 592 of the Vancouver Charter. The Director of Planning has advised that any prior-to conditions are complete, and enactment of the attached by-law will implement Council's resolution.

Director of Legal Services
September 22, 2009

431 Helmcken Street

BY-LAW NO. _____



**A By-law to authorize Council entering into a
Heritage Revitalization Agreement
with the Owner of Heritage Property**

PREAMBLE

Council has authority under the *Vancouver Charter* to enter into a heritage revitalization agreement with the owner of heritage property including terms and conditions to which Council and the owner may agree.

Certain property bearing the civic address of 431 Helmcken Street, and the following legal description:

PID: 014-613-379
Lot E
Block 85
District Lot 541
Plan 1444

contains a heritage building.

Council is of the opinion that the building has sufficient heritage value to justify its conservation, and Council and the owner of the property have agreed to facilitate such conservation by agreeing to the terms and conditions set out in the attached heritage revitalization agreement.

NOW THEREFORE THE COUNCIL OF THE CITY OF VANCOUVER, in public meeting, enacts as follows:

1. Council authorizes the City to enter into a heritage revitalization agreement with the owner in substantially the form and substance of the heritage revitalization agreement attached to this By-law, and also authorizes the Director of Legal Services to execute the agreement on behalf of the City and to deliver it to the owner on such terms and conditions as the Director of Legal Services deems fit.

2. This By-law is to come into force and take effect on the date of its enactment.

ENACTED by Council this _____ day of _____, 2009

Mayor

City Clerk

LAND TITLE ACT

FORM C

(Section 233)

Province of British Columbia

GENERAL INSTRUMENT - PART 1

(This area for Land Title Office Use)

Page 1 of 10 pages

1. APPLICATION: (Name, address, phone number and signature of applicant, applicant's solicitor or agent)

Signature of Agent

2. PARCEL IDENTIFIER(S) AND LEGAL DESCRIPTION(S) OF LAND:*

(PID)

(LEGAL DESCRIPTION)

014-613-379

Lot E Block 85 District Lot 541 Plan 1444

3. NATURE OF INTEREST:*

DESCRIPTION

DOCUMENT REFERENCE
(page and paragraph)

PERSON ENTITLED TO INTEREST

SEE SCHEDULE

4. TERMS: Part 2 of this instrument consists of (select one only)

- (a) Filed Standard Charge Terms [] D.F. No.
(b) Express Charge Terms [XX] Annexed as Part 2
(c) Release [] There is no Part 2 of this instrument

A selection of (a) includes any additional or modified terms referred to in Item 7 or in a schedule annexed to this instrument. If (c) is selected, the charge described in Item 3 is released or discharge as a charge on the land described in Item 2.

5. TRANSFEROR(S):*

PHOEBUS ENTERPRISES LTD. (Inc. No. BC0198985)

6. TRANSFEREE(S):* (including postal address(es) and postal code(s))*

CITY OF VANCOUVER, 453 West 12th Avenue, Vancouver, B.C., V5Y 1V4

7. ADDITIONAL OR MODIFIED TERMS:*

N/A

8. EXECUTION(S):** This instrument creates, assigns, modifies, enlarges, discharges or governs the priority of the interest(s) described in Item 3 and the Transferor(s) and every other signatory agree to be bound by this instrument, and acknowledge(s) receipt of a true copy of the filed standard charge terms, if any.

Officer Signature(s)	Execution Date			Party(ies) Signature(s)
	Y	M	D	
<hr/> (Solicitor) (as to both signatures)	09			PHOEBUS ENTERPRISES LTD. by its authorized signatories: <hr/> Print Name: <hr/> Print Name:
<hr/> Bruce T. Quayle Solicitor 453 West 12 th Avenue Vancouver, BC, V5Y 1V4 Tel: 604-873-7714	09			CITY OF VANCOUVER by its authorized signatory: <hr/> Frances J. Connell/Graham P. Johnsen

OFFICER CERTIFICATION:

Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the Evidence Act, R.S.B.C. 1996, c.124, to take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the Land Title Act as they pertain to the execution of this instrument.

* If space insufficient, enter "SEE SCHEDULE" and attach schedule in Form E.

** If space insufficient, continue executions on additional page(s) in Form D.

**LAND TITLE ACT
FORM E
SCHEDULE**

Enter the Required Information in the Same Order as the Information Must Appear on the Freehold Transfer Form, Mortgage Form or General Document Form.

3. NATURE OF INTEREST:

DESCRIPTION	DOCUMENT REFERENCE (page and paragraph)	PERSON ENTITLED TO INTEREST
Section 219 Covenant	Pages 6 - 7, Article 2	Transferee
Statutory Right of Way	Page 8 - 9, Article 5	Transferee
Equitable Charge	Page 9, Article 6	Transferee

TERMS OF INSTRUMENT - PART 2

Heritage Revitalization Agreement - 431 Helmcken Street

WHEREAS:

A. The Owner (as hereinafter defined) is the registered owner of the lands and premises in the City of Vancouver with a civic address of 431 Helmcken Street, legally known and described as:

PID: 014-613-379
 Lot E Block 85 District Lot 541 Plan 1444
 (the "Lands");

B. There is an Edwardian era house on the Lands that is a rare example of a type of housing formerly common to the area of the Lands that was constructed in the early 1900's, as modest, 1 ½ storey, middle class housing and that substantially is in its original form and character and is considered to be of heritage value (the "Heritage Building").

D. Pursuant to Section 592 of the *Vancouver Charter* S.B.C. 1953, c.55 (the "*Charter*"), the City may enter into a heritage revitalization agreement with an owner of heritage property, and a heritage revitalization agreement may include provisions regarding the commencement and completion of actions required by the agreement, may vary or supplement provisions of a subdivision by-law, a zoning by-law, a development cost levy by-law, a development permit and a heritage alteration permit and may include such other terms and conditions as the City's Council and the Owner may agree.

D. In exchange for the City making arrangements for additional, off-site parking for and allocating additional transferable density to the Lands and permitting a greater floor space ratio than is otherwise permitted under the applicable zoning for non-residential uses of the Heritage Building, the Owner has agreed to enter into this agreement so as to secure the long-term conservation of the Heritage Building and to accept the designation of the Heritage Building as a protected heritage building under the *Charter*.

E. The City has made arrangements for additional, off-site parking for the Lands, to be located within premises to be constructed on neighbouring lands at 1098 Richards St. under City Development Permit No. DE411788 and to be made available for the Lands after an occupancy permit has been issued for the development contemplated by that permit.

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 passing from the City to the Owner (the receipt and sufficiency of which the Owner hereby acknowledges) the parties agree as follows:

ARTICLE 1 DEFINITIONS AND INTERPRETATION

1.1 Definitions. Except where otherwise explicitly and specifically provided for in this agreement, the terms defined here have the following meanings throughout this agreement:

- (a) **“Building By-law”** means the City of Vancouver Building By-law No. 9419, as varied or supplemented from time to time, and includes any successor building by-law to the extent the same is or may be applicable;
- (b) **“Charter”** means the *Vancouver Charter*, SBC 1953 c. 55;
- (c) **“City”** means the City of Vancouver as a municipal corporation continued pursuant to *Charter*;
- (d) **“City of Vancouver”** means the City’s geographic location and area;
- (e) **“conserve” “conservation”** mean all actions or processes that are aimed at safeguarding the character defining elements of a heritage building, structure or feature so as to retain its heritage value and extend its physical life, including, without limitation, actions or processes aimed at preservation, maintenance, rehabilitation and/or restoration thereof;
- (f) **“Effective Date”** means the date that this agreement is duly registered with the Land Title Office on title to the Lands;
- (g) **“Floor Space”** means the size of a real property development or a portion of a real property development measured in floor space area, calculated in accordance with the Zoning and Development By-laws;
- (h) **“Heritage Building”** means the Heritage Building as described and defined in Recital B above and includes, without limitation, all permitted replacements therefor and additions thereto and therein;
- (i) **“Land Title Act”** means the *Land Title Act*, R.S.B.C. 1996, c.250, as amended from time to time and any and all replacements thereof or any statute enacted in substitution thereof and all regulations applicable thereto and any amendments, replacements and substitutions thereof;
- (j) **“Lands”** means the Lands described and as defined in Recital A to this agreement includes, without limitation, any and all parcels into which they are consolidated and/or in any way subdivided;
- (k) **“Owner”** means the registered owner of the Lands and all of his, her or its assigns, successors and successors in title to the Lands or any part of them;
- (l) **“Transferable Density”** means real property development rights of 1,231 square feet of Floor Space transferable pursuant to the *Charter* and the policies and guidelines of the City’s heritage density increase transfer system;
- (m) **“Zoning and Development By-laws”** means those of the by-laws of the City that from time to time regulate the use and development of land in the City of Vancouver, including, without limitation, with respect to allowable density and

floor space ratios, and are applicable to the Lands and to every part into which the Lands may be subdivided, including, without limitation, the City's Zoning and Development By-Law No. 3575.

1.2 **Headings.** The division of this Agreement into Articles, Sections and Paragraphs and the insertion of headings is for the convenience of reference only and will not affect the construction or interpretation of this Agreement. The terms "this Agreement", "hereof", "hereunder" and similar expressions refer to this Agreement and not to any particular Article or other portion hereof and include any agreement or instrument supplemental or ancillary hereto. Unless something in the subject matter or context is inconsistent therewith, references herein to Recitals, Articles, Sections or Paragraphs are to Recitals, Articles, Sections or Paragraphs of this Agreement.

1.3 **Number.** Words importing the singular number only will include the plural and vice versa, words importing the masculine gender will include the feminine and neuter genders and vice versa and words importing persons will include individuals, partnerships, associations, trusts, unincorporated organizations and corporations and vice versa.

1.4 **Governing Law.** This Agreement will be governed by and construed in accordance with the laws of the Province of British Columbia and the laws of Canada applicable therein.

ARTICLE 2 CONSERVATION OF HERITAGE BUILDING

2.1 Pursuant to Section 219 of the *Land Title Act* and pursuant to Section 592 of the *Charter*, the Owner covenants to and agrees with the City that:

- (a) at all times after the Effective Date, the Owner, at its expense, will conserve the Heritage Building and keep it in good condition in all respects as would a reasonable and prudent owner;
- (b) the Owner will not at any time after the Effective Date in any way physically alter the exterior of, make structural changes to or in any way renovate or reconfigure the Heritage Building, except as may be permitted by this agreement or a heritage alteration permit issued by the City;
- (c) the Owner will refrain from doing anything at any time to obscure, deface or remove any commemorative plaque the City may affix to the Heritage Building pursuant to the statutory right of way granted to the City herein;
- (d) the Owner, at its expense, and to the City's satisfaction, will obtain and at all times after the Effective Date will keep insurance for the Heritage Building so that it is insured to full replacement value against all perils, including, without limitation, earthquake;

- (e) if the Heritage Building is ever damaged in any way, the Owner, at its expense, will repair and restore it and its appearance as necessary to put it back into the condition and appearance it was in prior to the damage, unless it is unlawful or uneconomical to do so, in which case, the Owner will not be obligated to repair the Heritage Building, but will be restricted to constructing or otherwise putting in place on the Lands a building of similar form, appearance, massing, quality of materials, detailing and height of the damaged Heritage Building, and the City, at the Owner's expense, will execute and deliver an amendment to and, to the extent applicable, a partial discharge of this agreement to reflect such change in circumstances.
- (f) in any determination as to whether it is uneconomical to repair the Heritage Building, if it is ever damaged in any way, only building repair construction costs as compared to building replacement construction costs and the heritage incentives that have been granted in respect of the Heritage Building will be taken into consideration; and
- (g) if the Heritage Building is ever damaged in any way, and the Owner and the City cannot agree on whether it is uneconomical to make repairs thereto, the matter will be determined by arbitration as follows: within thirty (30) days following written notice of the dispute by either party to the other, such dispute will be referred to a single arbitrator to be chosen by the Owner and the City or, if the Owner and the City do not agree as to the choice of a single arbitrator, then by three (3) arbitrators, one (1) of whom will be chosen by the Owner, one (1) of whom will be chosen by the City and the third by the two (2) so arbitrators chosen, and the third arbitrator so chosen will be the chairman, in which case decisions in arbitration hereunder will be made by the majority of the arbitrators. Except as to matters otherwise provided herein, the provisions of the *Commercial Arbitration Act* (British Columbia), as amended or re-enacted from time to time, will apply.

2.2 If at any time the Owner fails to carry out its obligations to conserve the Heritage Building as required hereby, the City, subject to the provisions of this agreement, may do so on the Owner's behalf, in which case the Owner will be obligated to pay the City the cost to it of carrying out those obligations, plus an amount equal to 20% of that amount for overhead and interest on those amounts at the Bank of Montreal's prime lending rate plus 3%.

ARTICLE 3 TRANSFERABLE DENSITY

3.1 Upon registration of this agreement on title to the Lands, to the City's satisfaction, and the City enacting a bylaw to designate the Heritage Building as a protected heritage property, the City will assign the Transferable Density to the Lands.

3.2 The Owner's use of the Transferable Density will be subject to the provisions of the *Charter*, to all City policies governing the use and transfer of the Transferable Density and to the following restrictions:

- (a) the Transferable Density will not be used on the Lands; and

- (b) the Transferable Density may be transferred only to locations identified by the City in its Transfer of Density Policy.

ARTICLE 4 ZONING AND DEVELOPMENT VARIANCE

4.1 Pursuant to Section 592 of the *Charter* the City's Downtown Official Development Plan ("DODP"), adopted by bylaw 4912, is hereby amended in respect of the Lands so that, provided and for so long as the Heritage Building is conserved in accordance with this agreement, the Lands are exempt from the floor space ratio limits prescribed by the DODP for office, institutional and cultural and recreational uses, as those terms are defined in the City's Zoning and Development Bylaw No. 3575.

4.2 The DODP variation effected by and the other benefits granted to the Owner in relation to this agreement are full and fair compensation for the obligations and restrictions placed upon the Owner by this agreement and any heritage designation made of the Heritage Buildings under the *Charter*, and the Owner hereby waives and renounces all claims for further or other compensation by reason of this agreement.

ARTICLE 5 STATUTORY RIGHT OF WAY

5.1 Pursuant to Section 218 of the *Land Title Act*, the Owner hereby grants to the City a statutory right of way to enter and be upon the Lands and to install upon the exterior of the Heritage Building a commemorative plaque regarding the Heritage Building's historical significance and, if the City chooses, in the event the Owner fails to carry out its obligations hereunder to conserve the Heritage Building, to carry out any conservation work on the Heritage Building the City, in its discretion, considers to be necessary in order to conserve it in accordance with this agreement.

5.2 Notwithstanding the foregoing, nothing herein in any way obligates the City to carry out in whole or in part any conservation work on the Heritage Building.

5.3 In the event that the City enters upon the Lands to conduct all, or any part, of the rehabilitation of the Heritage Building or any other work contemplated by Section 5.1:

- (a) there will be no express or implied warranties as to the quality of such rehabilitation work or any other work contemplated by Section 5.1 or the suitability of the materials for the purposes for which they are put; and
- (b) the Owner will pay to the City the costs incurred by the City in undertaking such rehabilitation work or any part thereof, and any other work contemplated by Section 5.1, plus twenty percent (20%) of such costs as fair compensation for the City's administrative costs and interest at the Bank of Montreal's prime lending rate plus 3%.

5.4 The statutory right of way set out in this Article 5 is necessary for the operation and maintenance of the City's undertaking.

ARTICLE 6 EQUITABLE CHARGE

6.1 The Owner hereby grants to the City an equitable charge over the Lands, which charge will run with, charge and bind the Lands, for the payment of all sums (including all interest thereon) which may at any time be payable by the Owner to the City under the terms of this agreement or otherwise at law. This equitable charge may be enforced by the appointment of a receiver for the sale of the Lands.

ARTICLE 7 RELEASE AND INDEMNITY

7.1 The Owner hereby releases the City and its officials, councillors, employees, contractors, agents and licensees (each, a "City Party" for the purposes of this Section 6.1) and will indemnify them for and save them harmless from and against all liabilities, actions, statutory or other proceedings, judgements, investigations, claims, losses, loss of profit, injuries, damages, consequential damages, fines, penalties, costs and, on an actual cost basis, legal costs the City, any City Party, the Owner or any other person or entity may suffer, incur or experience as a result of or in any way connected with:

- (a) the inability of the Owner to use, in whole or in part, any of the Transferable Density, whether such inability arises from the decision of the City's Development Permit Board, City Council, a court of competent jurisdiction or otherwise;
- (b) the City conducting all or any portion of the conservation of the Heritage Building or any other work contemplated by this agreement;
- (c) the City withholding any permits (including, without limitation, an occupancy permit) under this agreement, until the Owner has fully complied with all requirements of this agreement and otherwise applicable to the Lands;
- (d) this agreement, except to the extent the same arises directly and solely from a default of the City or a City Party hereunder;
- (e) any release of this agreement or the loss of any of the rights granted hereunder;
- (f) the non-compliance, if any, of the Lands, the Heritage Building or any part thereof with any City by-law; and
- (g) the issuance of any development permit in respect of the Lands.

The release and indemnity set out in this Article 6 will survive the expiration or earlier termination of this Agreement and will survive any modification, release or partial release of any of the covenants created by this Agreement. The release and indemnity in this Article 6 will be

both personal covenants of the Owner and an integral part of the Section 219 covenant granted in this agreement.

ARTICLE 8 GENERAL

8.1 If the registered owner of the Lands will be more than one party, such parties will be jointly and severally liable to the City for the performance and observance of the Owner's obligations in this agreement.

8.2 Time is of the essence in all respects in relation to this agreement and any instance of waiver of that requirement will not be a waiver for all or any other purpose hereunder.

8.3 The Owner, at his, her or its expense, after execution of this agreement, will do or cause to be done all things and acts necessary to ensure that this agreement is registered against title to the Lands with priority over all other financial encumbrances except financial encumbrances in favour of the City.

8.4 In any action to enforce this agreement the City will be entitled to court costs on an actual cost basis. In addition to any other rights the City may have pursuant to this agreement or at law or in equity, the City may enforce this agreement by mandatory and prohibitory injunctions.

8.5 If the Land Title Office refuses to register this agreement, the Owner agrees to modify or re-execute this agreement to the City's satisfaction so as to enable registration.

8.6 This agreement will charge and run with the Lands and will enure to the benefit of and be binding upon the Owner and its successors and trustees and the Owner's successors in title to the Lands and their respective trustees and successors and all parties claiming through such owners.

8.7 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 rights, powers, duties or obligations in the exercise of its functions pursuant to the *Vancouver Charter* 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.

IN WITNESS WHEREOF the parties have executed this Agreement on Form C which is a part hereof.

END OF DOCUMENT

EXPLANATION**Heritage Designation By-law
re 431 Helmcken Street**

At a public hearing on September 8, 2009, Council approved a recommendation to designate a building at 431 Helmcken Street as protected heritage property. Enactment of the attached by-law will achieve the designation.

Director of Legal Services
September 22, 2009

431 Helmcken Street

BY-LAW NO. _____

**A By-law to designate certain real property
as protected heritage property**

THE COUNCIL OF THE CITY OF VANCOUVER, in public meeting, enacts as follows:

1. Council considers that the real property described as:

Structure and exterior
envelope of the
improvements and
exterior building
materials

431 Helmcken Street,
Vancouver, BC

PID: 014-613-379
Lot E
Block 85
District Lot 541
Plan 1444

has heritage value or heritage character, and that its designation as protected heritage property is necessary or desirable for its conservation.

2. Council designates the real property described in section 1 of this By-law as protected heritage property under Section 593 of the *Vancouver Charter*.

3. This By-law is to come into force and take effect on the date of its enactment.

ENACTED by Council this _____ day of _____, 2009

Mayor

City Clerk

EXPLANATION**Authorization to enter into a
Heritage Revitalization Agreement
with the owner of 439 Helmcken Street**

After the public hearing on September 8, 2009, Council resolved to enter into a by-law to authorize an agreement with the owner of the property at 439 Helmcken Street pursuant to Section 592 of the Vancouver Charter. The Director of Planning has advised that any prior-to conditions are complete, and enactment of the attached by-law will implement Council's resolution.

Director of Legal Services
September 22, 2009

439 Helmcken Street

BY-LAW NO. _____



**A By-law to authorize Council entering into a
Heritage Revitalization Agreement
with the Owner of Heritage Property**

PREAMBLE

Council has authority under the *Vancouver Charter* to enter into a heritage revitalization agreement with the owner of heritage property including terms and conditions to which Council and the owner may agree.

Certain property bearing the civic address of 439 Helmcken Street, and the following legal description:

PID: 013-704-974

Lot C

Block 85

District Lot 541

Plan 1444

contains a heritage building.

Council is of the opinion that the building has sufficient heritage value to justify its conservation, and Council and the owner of the property have agreed to facilitate such conservation by agreeing to the terms and conditions set out in the attached heritage revitalization agreement.

NOW THEREFORE THE COUNCIL OF THE CITY OF VANCOUVER, in public meeting, enacts as follows:

1. Council authorizes the City to enter into a heritage revitalization agreement with the owner in substantially the form and substance of the heritage revitalization agreement attached to this By-law, and also authorizes the Director of Legal Services to execute the agreement on behalf of the City and to deliver it to the owner on such terms and conditions as the Director of Legal Services deems fit.

2. This By-law is to come into force and take effect on the date of its enactment.

ENACTED by Council this day of , 2009

Mayor

City Clerk

LAND TITLE ACT

FORM C

(Section 233)

Province of British Columbia

GENERAL INSTRUMENT - PART 1

(This area for Land Title Office Use)

Page 1 of 11 pages

1. APPLICATION: (Name, address, phone number and signature of applicant, applicant's solicitor or agent)

Signature of Agent

2. PARCEL IDENTIFIER(S) AND LEGAL DESCRIPTION(S) OF LAND:*

(PID)

(LEGAL DESCRIPTION)

013-704-974

Lot C Block 85 District Lot 541 Plan 1444

3. NATURE OF INTEREST:*

DESCRIPTION

DOCUMENT REFERENCE
(page and paragraph)

PERSON ENTITLED TO INTEREST

SEE SCHEDULE

4. TERMS: Part 2 of this instrument consists of (select one only)

(a) Filed Standard Charge Terms

D.F. No.

(b) Express Charge Terms

annexed as Part 2

(c) Release

There is no Part 2 of this instrument

A selection of (a) includes any additional or modified terms referred to in Item 7 or in a schedule annexed to this instrument. If (c) is selected, the charge described in Item 3 is released or discharge as a charge on the land described in Item 2.

5. TRANSFEROR(S):*

BRITISH COLUMBIA RESTAURANT & FOODSERVICES ASSOCIATION (Inc. No. S-0012852)

BANK OF MONTREAL (as to priority)

6. TRANSFEREE(S):* (including postal address(es) and postal code(s))*

CITY OF VANCOUVER, 453 West 12th Avenue, Vancouver, B.C., V5Y 1V4

7. ADDITIONAL OR MODIFIED TERMS:*

N/A

8. EXECUTION(S):** This instrument creates, assigns, modifies, enlarges, discharges or governs the priority of the interest(s) described in Item 3 and the Transferor(s) and every other signatory agree to be bound by this instrument, and acknowledge(s) receipt of a true copy of the filed standard charge terms, if any.

Officer Signature(s)	Execution Date			Party(ies) Signature(s)
	Y	M	D	
_____ (Solicitor) (as to both signatures)	09			BRITISH COLUMBIA RESTAURANT & FOODSERVICES ASSOCIATION by its authorized signatory(ies): _____ Print Name: _____ Print Name:
_____ (Solicitor) (as to both signatures)	09			BANK OF MONTREAL by its authorized signatory(ies): _____ Print Name: _____ Print Name:
_____ Bruce T. Quayle Solicitor 453 West 12 th Avenue Vancouver, BC, V5Y 1V4 Tel: 604-873-7714	09			CITY OF VANCOUVER by its authorized signatory: _____ Frances J. Connell/Graham P. Johnsen

OFFICER CERTIFICATION:

Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the Evidence Act, R.S.B.C. 1996, c.124, to take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the Land Title Act as they pertain to the execution of this instrument.

* If space insufficient, enter "SEE SCHEDULE" and attach schedule in Form E.

** If space insufficient, continue executions on additional page(s) in Form D.

**LAND TITLE ACT
FORM E
SCHEDULE**

Enter the Required Information in the Same Order as the Information Must Appear on the Freehold Transfer Form, Mortgage Form or General Document Form.

3. NATURE OF INTEREST:

DESCRIPTION	DOCUMENT REFERENCE (page and paragraph)	PERSON ENTITLED TO INTEREST
(a) Section 219 Covenant	Pages 6 and 7, Article 2	Transferee
(b) Priority Agreement granting the above Section 219 Covenant priority over Mortgage BB716305 and Assignment of Rents BB716306	Page 11	Transferee
(c) Statutory Right of Way	Pages 8 and 9, Article 5	Transferee
(d) Priority Agreement granting the above Statutory Right of Way priority over Mortgage BB716305 and Assignment of Rents BB716306	Page 11	Transferee
(e) Equitable Charge	Page 9, Article 6	Transferee
(f) Priority Agreement granting the above Equitable Charge priority over Mortgage BB716305 and Assignment of Rents BB716306	Page 11	Transferee

TERMS OF INSTRUMENT - PART 2

Heritage Revitalization Agreement
439 Helmcken Street

WHEREAS:

- A. The Owner (as hereinafter defined) is the registered owner of the lands and premises in the City of Vancouver with a civic address of 439 Helmcken Street, legally known and described as:

PID: 013-704-974

Lot C Block 85 District Lot 541 Plan 1444

(the "Lands");

- B. There is an Edwardian era house on the Lands that is a rare example of a type of housing formerly common to the area of the Lands that was constructed in the early 1900's, as modest, 1-½ storey, middle class housing and that substantially is in its original form and character and is considered to be of heritage value (the "Heritage Building").
- C. Pursuant to Section 592 of the *Vancouver Charter* S.B.C. 1953, c.55 (the "*Charter*"), the City may enter into a heritage revitalization agreement with an owner of heritage property, and a heritage revitalization agreement may include provisions regarding the commencement and completion of actions required by the agreement, may vary or supplement provisions of a subdivision by-law, a zoning by-law, a development cost levy by-law, a development permit and a heritage alteration permit and may include such other terms and conditions as the City's Council and the Owner may agree.
- D. In exchange for the City making arrangements for additional, off-site parking for and allocating additional transferable density to the Lands and permitting a greater floor space ratio than is otherwise permitted under the applicable zoning for non-residential uses of the Heritage Building, the Owner has agreed to enter into this agreement so as to secure the long-term conservation of the Heritage Building and to accept the designation of the Heritage Building as a protected heritage building under the *Charter*.
- E. The City has made arrangements for additional, off-site parking for the Lands, to be located within premises to be constructed on neighbouring lands at 1098 Richards St. under City Development Permit No. DE411788 and to be made available for the Lands after an occupancy permit has been issued for the development contemplated by that permit.

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 passing from the City to the Owner (the receipt and sufficiency of which the Owner hereby acknowledges) the parties agree as follows:

**ARTICLE 1
DEFINITIONS AND INTERPRETATION**

- 1.1 **Definitions.** Except where otherwise explicitly and specifically provided for in this agreement, the terms defined here have the following meanings throughout this agreement:
- (a) **"Building By-law"** means the City of Vancouver Building By-law No. 9419, as varied or supplemented from time to time, and includes any successor building by-law to the extent the same is or may be applicable;
 - (b) **"Charter"** means the *Vancouver Charter*, SBC 1953 c. 55;
 - (c) **"City"** means the City of Vancouver as a municipal corporation continued pursuant to *Charter*;
 - (d) **"City of Vancouver"** means the City's geographic location and area;
 - (e) **"conserve"** **"conservation"** mean all actions or processes that are aimed at safeguarding the character defining elements of a heritage building, structure or feature so as to retain its heritage value and extend its physical life, including, without limitation, actions or processes aimed at preservation, maintenance, rehabilitation and/or restoration thereof;
 - (f) **"Effective Date"** means the date that this agreement is duly registered with the Land Title Office on title to the Lands;
 - (g) **"Floor Space"** means the size of a real property development or a portion of a real property development measured in floor space area, calculated in accordance with the Zoning and Development By-laws;
 - (h) **"Heritage Building"** means the Heritage Building as described and defined in Recital B above and includes, without limitation, all permitted replacements therefor and additions thereto and therein;
 - (i) **"Land Title Act"** means the *Land Title Act*, R.S.B.C. 1996, c.250, as amended from time to time and any and all replacements thereof or any statute enacted in substitution thereof and all regulations applicable thereto and any amendments, replacements and substitutions thereof;
 - (j) **"Lands"** means the Lands described and as defined in Recital A to this agreement includes, without limitation, any and all parcels into which they are consolidated and/or in any way subdivided;
 - (k) **"Owner"** means the registered owner of the Lands and all of his, her or its assigns, successors and successors in title to the Lands or any part of them;

- (l) **“Transferable Density”** means real property development rights of 1,231 square feet of Floor Space transferable pursuant to the *Charter* and the policies and guidelines of the City’s heritage density increase transfer system;
- (m) **“Zoning and Development By-laws”** means those of the by-laws of the City that from time to time regulate the use and development of land in the City of Vancouver, including, without limitation, with respect to allowable density and floor space ratios, and are applicable to the Lands and to every part into which the Lands may be subdivided, including, without limitation, the City’s Zoning and Development By-Law No. 3575.

1.2 **Headings.** The division of this Agreement into Articles, Sections and Paragraphs and the insertion of headings is for the convenience of reference only and will not affect the construction or interpretation of this Agreement. The terms “this Agreement”, “hereof”, “hereunder” and similar expressions refer to this Agreement and not to any particular Article or other portion hereof and include any agreement or instrument supplemental or ancillary hereto. Unless something in the subject matter or context is inconsistent therewith, references herein to Recitals, Articles, Sections or Paragraphs are to Recitals, Articles, Sections or Paragraphs of this Agreement.

1.3 **Number.** Words importing the singular number only will include the plural and vice versa, words importing the masculine gender will include the feminine and neuter genders and vice versa and words importing persons will include individuals, partnerships, associations, trusts, unincorporated organizations and corporations and vice versa.

1.4 **Governing Law.** This Agreement will be governed by and construed in accordance with the laws of the Province of British Columbia and the laws of Canada applicable therein.

ARTICLE 2 CONSERVATION OF HERITAGE BUILDING

2.1 Pursuant to Section 219 of the *Land Title Act* and pursuant to Section 592 of the *Charter*, the Owner covenants to and agrees with the City that:

- (a) at all times after the Effective Date, the Owner, at its expense, will conserve the Heritage Building and keep it in good condition in all respects as would a reasonable and prudent owner;
- (b) the Owner will not at any time after the Effective Date in any way physically alter the exterior of, make structural changes to or in any way renovate or reconfigure the Heritage Building, except as may be permitted by this agreement or a heritage alteration permit issued by the City;
- (c) the Owner will refrain from doing anything at any time to obscure, deface or remove any commemorative plaque the City may affix to the Heritage Building pursuant to the statutory right of way granted to the City herein;

- (d) the Owner, at its expense, and to the City's satisfaction, will obtain and at all times after the Effective Date will keep insurance for the Heritage Building so that it is insured to full replacement value against all perils, including, without limitation, earthquake;
- (e) if the Heritage Building is ever damaged in any way, the Owner, at its expense, will repair and restore it and its appearance as necessary to put it back into the condition and appearance it was in prior to the damage, unless it is unlawful or uneconomical to do so, in which case, the Owner will not be obligated to repair the Heritage Building. but will be restricted to constructing or otherwise putting in place on the Lands a building of similar form, appearance, massing, quality of materials, detailing and height of the damaged Heritage Building, and the City, at the Owner's expense, will execute and deliver an amendment to and, to the extent applicable, a partial discharge of this agreement to reflect such change in circumstances.
- (f) in any determination as to whether it is uneconomical to repair the Heritage Building, if it is ever damaged in any way, only building repair construction costs as compared to building replacement construction costs and the heritage incentives that have been granted in respect of the Heritage Building will be taken into consideration; and
- (g) if the Heritage Building is ever damaged in any way, and the Owner and the City cannot agree on whether it is uneconomical to make repairs thereto, the matter will be determined by arbitration as follows: within thirty (30) days following written notice of the dispute by either party to the other, such dispute will be referred to a single arbitrator to be chosen by the Owner and the City or, if the Owner and the City do not agree as to the choice of a single arbitrator, then by three (3) arbitrators, one (1) of whom will be chosen by the Owner, one (1) of whom will be chosen by the City and the third by the two (2) so arbitrators chosen, and the third arbitrator so chosen will be the chairman, in which case decisions in arbitration hereunder will be made by the majority of the arbitrators. Except as to matters otherwise provided herein, the provisions of the *Commercial Arbitration Act* (British Columbia), as amended or re-enacted from time to time, will apply.

- 2.2 If at any time the Owner fails to carry out its obligations to conserve the Heritage Building as required hereby, the City, subject to the terms of this agreement, may do so on the Owner's behalf, in which case the Owner will be obligated to pay the City the cost to it of carrying out those obligations, plus an amount equal to 20% of that amount for overhead and interest on those amounts at the Bank of Montreal's prime lending rate plus 3%.

ARTICLE 3 TRANSFERABLE DENSITY

- 3.1 Upon registration of this agreement on title to the Lands, to the City's satisfaction, and the City enacting a bylaw to designate the Heritage Building as a protected heritage property, the City will assign the Transferable Density to the Lands.

- 3.2 The Owner's use of the Transferable Density will be subject to the provisions of the *Charter*, to all City policies governing the use and transfer of the Transferable Density and to the following restrictions:
- (a) the Transferable Density will not be used on the Lands; and
 - (b) the Transferable Density may be transferred only to locations identified by the City in its Transfer of Density Policy.

ARTICLE 4 ZONING AND DEVELOPMENT VARIANCE

- 4.1 Pursuant to Section 592 of the *Charter* the City's Downtown Official Development Plan ("DODP"), adopted by bylaw 4912, is hereby amended in respect of the Lands so that, provided and for so long as the Heritage Building is conserved in accordance with this agreement, the Lands are exempt from the floor space ratio limits prescribed by the DODP for office, institutional and cultural and recreational uses, as those terms are defined in the City's Zoning and Development Bylaw No. 3575.
- 4.2 The DODP variation effected by and the other benefits granted to the Owner in relation to this agreement are full and fair compensation for the obligations and restrictions placed upon the Owner by this agreement and any heritage designation made of the Heritage Buildings under the *Charter*, and the Owner hereby waives and renounces all claims for further or other compensation by reason of this agreement.

ARTICLE 5 STATUTORY RIGHT OF WAY

- 5.1 Pursuant to Section 218 of the *Land Title Act*, the Owner hereby grants to the City a statutory right of way to enter and be upon the Lands and to install upon the exterior of the Heritage Building a commemorative plaque regarding the Heritage Building's historical significance and, if the City chooses, in the event the Owner fails to carry out its obligations hereunder to conserve the Heritage Building, to carry out any conservation work on the Heritage Building the City, in its discretion, considers to be necessary in order to conserve it in accordance with this agreement.
- 5.2 Notwithstanding the foregoing, nothing herein in any way obligates the City to carry out in whole or in part any conservation work on the Heritage Building.
- 5.3 In the event that the City enters upon the Lands to conduct all, or any part, of the rehabilitation of the Heritage Building or any other work contemplated by Section 5.1:
- (a) there will be no express or implied warranties as to the quality of such rehabilitation work or any other work contemplated by Section 5.1 or the suitability of the materials for the purposes for which they are put; and
 - (b) the Owner will pay to the City the costs incurred by the City in undertaking such rehabilitation work or any part thereof, and any other work contemplated by

Section 5.1, plus twenty percent (20%) of such costs as fair compensation for the City's administrative costs and interest at the Bank of Montreal's prime lending rate plus 3%.

- 5.4 The statutory right of way set out in this Article 5 is necessary for the operation and maintenance of the City's undertaking.

ARTICLE 6 EQUITABLE CHARGE

- 6.1 The Owner hereby grants to the City an equitable charge over the Lands, which charge will run with, charge and bind the Lands, for the payment of all sums (including all interest thereon) which may at any time be payable by the Owner to the City under the terms of this agreement or otherwise at law. This equitable charge may be enforced by the appointment of a receiver for the sale of the Lands.

ARTICLE 7 RELEASE AND INDEMNITY

- 7.1 The Owner hereby releases the City and its officials, councillors, employees, contractors, agents and licensees (each, a "City Party" for the purposes of this Section 6.1) and will indemnify them for and save them harmless from and against all liabilities, actions, statutory or other proceedings, judgements, investigations, claims, losses, loss of profit, injuries, damages, consequential damages, fines, penalties, costs and, on an actual cost basis, legal costs the City, any City Party, the Owner or any other person or entity may suffer, incur or experience as a result of or in any way connected with:
- (a) the inability of the Owner to use, in whole or in part, any of the Transferable Density, whether such inability arises from the decision of the City's Development Permit Board, City Council, a court of competent jurisdiction or otherwise;
 - (b) the City conducting all or any portion of the conservation of the Heritage Building or any other work contemplated by this agreement;
 - (c) the City withholding any permits (including, without limitation, an occupancy permit) under this agreement, until the Owner has fully complied with all requirements of this agreement and otherwise applicable to the Lands;
 - (d) this agreement, except to the extent the same arises directly and solely from a default of the City or a City Party hereunder;
 - (e) any release of this agreement or the loss of any of the rights granted hereunder;
 - (f) the non-compliance, if any, of the Lands, the Heritage Building or any part thereof with any City by-law; and
 - (g) the issuance of any development permit in respect of the Lands.

The release and indemnity set out in this Article 6 will survive the expiration or earlier termination of this Agreement and will survive any modification, release or partial release of any of the covenants created by this Agreement. The release and indemnity in this Article 6 will be both personal covenants of the Owner and an integral part of the Section 219 covenant granted in this agreement.

ARTICLE 8 GENERAL

- 8.1 If the registered owner of the Lands will be more than one party, such parties will be jointly and severally liable to the City for the performance and observance of the Owner's obligations in this agreement.
-
- 8.2 Time is of the essence in all respects in relation to this agreement and any instance of waiver of that requirement will not be a waiver for all or any other purpose hereunder.
- 8.3 The Owner, at his, her or its expense, after execution of this agreement, will do or cause to be done all things and acts necessary to ensure that this agreement is registered against title to the Lands with priority over all other financial encumbrances except financial encumbrances in favour of the City.
- 8.4 In any action to enforce this agreement the City will be entitled to court costs on an actual cost basis. In addition to any other rights the City may have pursuant to this agreement or at law or in equity, the City may enforce this agreement by mandatory and prohibitory injunctions.
- 8.5 If the Land Title Office refuses to register this agreement, the Owner agrees to modify or re-execute this agreement to the City's satisfaction so as to enable registration.
- 8.6 This agreement will charge and run with the Lands and will enure to the benefit of and be binding upon the Owner and its successors and trustees and the Owner's successors in title to the Lands and their respective trustees and successors and all parties claiming through such owners.
- 8.7 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 rights, powers, duties or obligations in the exercise of its functions pursuant to the *Vancouver Charter* 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.

IN WITNESS WHEREOF the parties have executed this Agreement on Form C which is a part hereof.

PRIORITY AGREEMENT**MEMORANDUM AS TO ENCUMBRANCES, LIENS and INTERESTS**

BANK OF MONTREAL (the "Chargeholder")
holder of Mortgage No. BB716305 and Assignment of Rents BB716306 (the "Charge")
charging Lot C Block 85 District Lot 541 Plan 1444 (the "Lands")

For Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and agreed to by the Chargeholder, the Chargeholder, being the holder of the Charge, hereby consents to the granting of the Section 219 Covenant, Statutory Right of Way and Equitable Charge (collectively, the "Encumbrance") which are contained in the attached agreement, and consents and agrees that the Encumbrance shall be binding upon the Chargeholder's interest in or charge upon the Lands and shall be an encumbrance upon the Lands in priority to the Charge in the same manner and to the same effect as if the Encumbrance had been granted and registered against title to the Lands prior to the dating, execution and registration of the Charge and the advance of any monies thereunder.

IN WITNESS WHEREOF the Chargeholder has executed this Priority Agreement by causing its proper officers to sign the General Instrument - Part 1 attached hereto.

END OF DOCUMENT

EXPLANATION

**Heritage Designation By-law
re 439 Helmcken Street**

At a public hearing on September 8, 2009, Council approved a recommendation to designate a building at 439 Helmcken Street as protected heritage property. Enactment of the attached by-law will achieve the designation.

Director of Legal Services
September 22, 2009

439 Helmcken Street

BY-LAW NO. _____

**A By-law to designate certain real property
as protected heritage property**

THE COUNCIL OF THE CITY OF VANCOUVER, in public meeting, enacts as follows:

1. Council considers that the real property described as:

Structure and exterior
envelope of the
improvements and
exterior building
materials

439 Helmcken Street,
Vancouver, BC

PID: 013-704-974
Lot C
Block 85
District Lot 541
Plan 1444

has heritage value or heritage character, and that its designation as protected heritage property is necessary or desirable for its conservation.

2. Council designates the real property described in section 1 of this By-law as protected heritage property under Section 593 of the *Vancouver Charter*.

3. This By-law is to come into force and take effect on the date of its enactment.

ENACTED by Council this _____ day of _____, 2009

Mayor

City Clerk

EXPLANATION**Authorization to enter into a housing agreement
re 2960 - 2990 Nanaimo Street**

On March 24, 2009, Council approved a recommendation to approve a housing agreement for 2960-2990 Nanaimo Street re core need households at below market rents. Enactment of the attached by-law will implement that resolution, and authorize Council to enter into a housing agreement with the land owner.

Director of Legal Services
September 22, 2009

2960 - 2990 Nanaimo Street

BY-LAW NO. _____



**A By-law to enact a Housing Agreement
for 2960 - 2990 Nanaimo Street**

THE COUNCIL OF THE CITY OF VANCOUVER, in public meeting, enacts as follows:

1. Council authorizes the City to enter into a housing agreement with the owner of certain lands described as Parcel Identifier: 006-913-709, Lot 4, Parcel Identifier: 006-913-822, Lot 5, and Parcel Identifier: 006-915-655, Lot 6, except part in Explanatory Plan 7933, all of Block U, Section 45, Town of Hastings Suburban Lands, Plan 11660, in substantially the form and substance of the housing agreement attached to this By-law, and also authorizes the Director of Legal Services to execute the agreement on behalf of the City and to deliver it to the owner on such terms and conditions as the Director of Legal Services deems fit.
2. This By-law is to come into force and take effect on the date of its enactment.

ENACTED by Council this _____ day of _____, 2009

Mayor

City Clerk

LAND TITLE ACT
FORM C

(Section 233)

Province of British Columbia

GENERAL INSTRUMENT - PART 1

(This area for Land Title Office Use)

Page 1 of 9 pages

1. APPLICATION: (Name, address, phone number and signature of applicant, applicant's solicitor or agent)

Signature of Agent

2. PARCEL IDENTIFIER(S) AND LEGAL DESCRIPTION(S) OF LAND:*

(PID)	(LEGAL DESCRIPTION)
006-913-709	Lot 4 Block U Section 45 Town of Hastings Suburban Lands Plan 11660
006-913-822	Lot 5 Block U Section 45 Town of Hastings Suburban Lands Plan 11660
006-915-655	Lot 6 Except Part in Explanatory Plan 7933 Block U Section 45 Town of Hastings Suburban Lands Plan 11660

3. NATURE OF INTEREST:*

DESCRIPTION	DOCUMENT REFERENCE (page and paragraph)	PERSON ENTITLED TO INTEREST
Section 219 Covenant	Section 1, Page 5	Transferee

4. TERMS: Part 2 of this instrument consists of (select one only)

- (a) Filed Standard Charge Terms D.F. No.
(b) Express Charge Terms Annexed as Part 2
(c) Release There is no Part 2 of this instrument

A selection of (a) includes any additional or modified terms referred to in Item 7 or in a schedule annexed to this instrument. If (c) is selected, the charge described in Item 3 is released or discharge as a charge on the land described in Item 2.

5. TRANSFEROR(S):*

0798134 B.C. Ltd. (Incorporation No. 0798134), 510 - 815 West Hastings St., Vancouver, B.C., V6C 1B4

6. TRANSFEREE(S):* (including postal address(es) and postal code(s))*

CITY OF VANCOUVER, 453 West 12th Avenue, Vancouver, B.C., V5Y 1V4

7. ADDITIONAL OR MODIFIED TERMS:*

N/A

8. EXECUTION(S):** This instrument creates, assigns, modifies, enlarges, discharges or governs the priority of the interest(s) described in Item 3 and the Transferor(s) and every other signatory agree to be bound by this instrument, and acknowledge(s) receipt of a true copy of the filed standard charge terms, if any.

Execution Date

Officer Signature(s)

Y	M	D

Party(ies) Signature(s)

0798134 B.C. Ltd., by its authorized signatories:

(Solicitor) (as to both signatures)

Signature and Printed Name

Signature and Printed Name

CITY OF VANCOUVER, by its authorized signatory:

Bruce T. Quayle, Solicitor
City of Vancouver
453 West 12th Avenue
Vancouver BC V5Y 1V4
Phone: 604-873-6545

OFFICER CERTIFICATION: Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the Evidence Act, R.S.B.C. 1996, c.124, to take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the Land Title Act as they pertain to the execution of this instrument.

* If space insufficient, enter "SEE SCHEDULE" and attach schedule in Form E.

** If space insufficient, continue executions on additional page(s) in Form D.

TERMS OF INSTRUMENT - PART 2

WHEREAS:

- A. The Transferor, 0798134 B.C. Ltd., is called the "Owner" herein.
- B. The Transferee, City of Vancouver, is called the "City" herein where referred to as the municipal corporation and the "City of Vancouver" herein where referred to as the geographical area.
- C. The Owner is the registered owner of the certain lands located at the southeast corner of the intersection of Grandview Highway and Nanaimo Street in the City of Vancouver, with the legal description shown in item 2 of the Form C portion of this instrument (the "Lands").
- D. The Owner wishes to develop the Lands by constructing thereon a three-storey mixed-use Development (the "Development") to consist of 24 residential units and associated amenity space to be used as non-market rental housing for aboriginal youth-in-transition and foster families, with some commercial (retail/office/service) space on the ground level, and for that purpose the Owner has applied to the City to rezone the Lands from C-1 (Commercial District) to CD-1 (Comprehensive Development District) (the "Rezoning").
- E. The City Council for the City approved the Rezoning at a public hearing on March 24, 2009, subject to the condition, among others, that the Owner first enter into with the City a Housing Agreement under Section 565.2 of the Vancouver Charter SBC 1953 c. 55 (the "Charter") and gives the City a restrictive covenant under Section 219 of the Land Title Act RSBC 1996 c.250 (the "Land Title Act") to ensure that at all times the uses to which the Development is put are consistent with the purpose of the Rezoning.
- F. This instrument contains the required Housing Agreement and restrictive covenant.

THEREFORE in consideration of the sum of ten dollars (\$10.00) now paid by the City and other good and valuable consideration passing from each party to the other (the receipt and sufficiency of which is hereby acknowledged), the parties agree as follows:

Definitions

1. In this instrument, the following terms have the meanings given to them here:
 - (a) "BC Housing" means the British Columbia Housing Management Commission as continued under the *Ministry of Lands, Parks and Housing Act* RSBC 1996 c.307 or, if it ceases to exist, any other Province of British Columbia agency or other authority carrying out in substance the activities BC Housing carries out by which it establishes the Core Needs Income Thresholds as defined herein;
 - (b) "Core-Need Household" means:
 - (i) any person, living as a single person household, whose Gross Annual Income, as disclosed by a current Income Statement, is less than the Core

- Needs Income Threshold applicable to the Dwelling Unit occupied or to be occupied thereby; and
- (ii) any persons living together as a family whose total combined Gross Annual Income, as disclosed by current Income Statement(s), is less than the Core Needs Income Threshold applicable to the Dwelling Unit occupied or to be occupied thereby;
- (c) “Core Needs Income Thresholds” means the gross annual income limits established by BC Housing to determine eligibility under its programs for subsidized housing in British Columbia or, if BC Housing ceases to exist or to establish and/or publish such limits annually or at some other regular period acceptable to the City, then such gross annual income limits as the City may set from time to time based on the BC Housing’s methods last used for establishing such limits;
- (d) “Development” has the meaning given in the recitals above herein;
- (e) “Dwelling Units” means the twenty-four (24) residential units to be constructed as part of the Development;
- (f) “Gross Annual Income” means the greater of:
- (i) total income or payments from all sources received at any time during the past calendar year regardless of whether it or they are taxable or not, including, without limitation, wages, salary, self employment net income, rents, fees, interest, dividends, pension payments, annuity payments, awards and payments in compensation for lost income, capital gains, bequests, lottery winnings and winnings from gambling and wagering; or
 - (ii) current total monthly income or payments from all sources regardless of whether it or they taxable or not, including, without limitation, wages, salary, rents, fees, interest, dividends, pension payments, annuity payments, awards and payments in compensation for lost income, capital gains, bequests, lottery winnings and winnings from gambling and wagering, multiplied by 12;
- (g) “Income Statement” means all of the following documents:
- (i) a sworn written statement of Gross Annual Income;
 - (ii) a true copy of a filed income tax return, if any, for the preceding calendar year; and
 - (iii) a true copy of the Government of Canada’s written assessment, if any, for an income tax return for the preceding calendar year.
- (h) “Owner” means the registered and beneficial owner(s) of the Lands and of each and every parcel of the land into which the Lands may be in any way subdivided or

consolidated, and its or their assigns and successors and successors in title to the Lands; and

- (i) "Rent Roll" means a written paper record showing the names of all persons residing in the Dwelling Units, the Dwelling Units in which they reside, the total Gross Annual Incomes for the occupants of each Dwelling Unit and the current monthly rent payable for each Dwelling Unit;
- (j) "Term" means the longer of:
 - (i) 60 years from the date this agreement is executed by all parties to it; or
 - (ii) the life of the building.

Covenant/Housing Agreement

- 2. Pursuant to Section 219 of the *Land Title Act*, R.S.B.C. 1996, c.250, and Section 565.2 of the *Vancouver Charter*, SBC 1953 c.55, the Owner covenants and agrees that:
 - (a) the Lands will not at any time during the Term used in any way that is inconsistent with this agreement;
 - (b) the Owner will use the Lands hereafter and during the Term only for the construction and operation of the Development
 - (c) the Owner will use the Dwelling Units at all times during the Term as non-market rental housing for Core-Need Households in accordance with this agreement;
 - (d) the Owner, at its expense, will construct the Development to full completion such that within a period of two years after the Land Title Act Section 219 Covenant contained herein is registered on title to the Lands an occupancy permit has been issued for full occupancy and use of the Development;
 - (e) the Owner may not, at any time during the Term, lease, license, set over or part with possession of the Lands or the Development in whole or in part except for:
 - (i) the letting of the Dwellings Units to Core-Need Households in accordance with this agreement; and
 - (ii) the letting of commercial space for uses approved by the City and, in the City's opinion, compatible with the objectives of the program to be run hereunder in respect of the Dwelling Units.
 - (f) the Owner may not, at any time during the Term, sell or transfer its legal or beneficial ownership of the Lands except with the City's explicit prior written approval;
 - (g) at all times after the issuance of an occupancy permit or permits for full occupancy and use of the Development, the legal and beneficial owner of the

Lands will be a non-profit society registered under the laws of British Columbia or charity registered under the laws of Canada;

- (h) the Owner will not at any time during the term do anything or suffer, cause or permit anyone else to do anything to in any way subdivide the Development, by strata plan or otherwise, and any such subdivision of the Development carried out in contravention of this covenant will be of no force or effect, and the City may require that any such subdivision be cancelled at the Owner's expense; and
- (i) at all times during the Term, after completion of construction of the Development, the Owner will keep and maintain the Development in its entirety in good repair and in a safe, clean, neat and tidy condition at all times as would a reasonably prudent owner.

3. Further pursuant to Section 565.2 of the *Vancouver Charter*, SBC 1953 c.55, the Owner covenants and agrees with the City that, at all times during the Term, the Owner will use, operate and manage the Dwelling Units as follows:

- (a) as much as reasonably and lawfully possible, all of the Dwelling Units at all times will be occupied by Core-Need Households;
- (b) as much as reasonably and lawfully possible, no fewer than 30% of the Dwelling Units will be occupied by Core-Need Households receiving income assistance pursuant to the *Employment and Assistance Act*, SBC 2002, c. 40 (and all amendments thereto and replacements thereof in respect of income assistance);
- (c) the Owner will not permit any person who is not a *bona fide* member of a Core-Need Household to occupy any Dwelling Unit at any time;
- (d) all Dwelling Units will be occupied by Core-Need Households pursuant to written tenancy agreements which explicitly are made subject to this agreement;
- (e) rent for the Dwelling Units will be charged and payable on a monthly basis only;
- (f) the Owner, at its expense, will obtain and keep on an annual basis Income Statements from all adult persons occupying the Dwelling Units;
- (g) the Owner, at its expense, will create and all times maintain and keep an up-to-date monthly Rent Roll;
- (h) the Owner, at its expense, forthwith anytime the City may request in writing, will deliver true copies of the Rent Roll covering such period(s) of time as the City may request and copies of the any Income Statements as the City may request; and
- (i) the Owner, at its expense, in accordance with good and prudent business and accounting practices, will create and for all time keep a comprehensive set of operational, business and financial records regarding the operation of the Lands and Development and will make available to the City for its inspection, at any time the City might reasonably request, all such records as the City may wish to inspect.

General

4. This agreement will run with the Lands and will bind the Lands and will attach thereto and run with each and every part into which the same may be subdivided or consolidated whether by strata plan, subdivision plan or otherwise.
5. This agreement will enure to the benefit of and bind each of the City and its successors and assigns and the Owner and the Owner's heirs, executors, administrators, successors, and assigns.
6. The Owner hereby releases and discharges the City and its officials, officers, employees and agents from any liability for any loss, injury or expense the Owner or any other person or legal entity may suffer, incur or experience as a result of or in relation to this agreement or the subject matter hereof, and the Owner will indemnify the City and its officials, officers, employees and agents for any loss, injury or expense they or any of them may incur, suffer or experience and for any complaints, demands, claims, actions, suits and judgments made against them or any of them for any loss, injury or expense they or any of them or any other person or legal entity may suffer, incur or experience as a result of or in relation to this agreement or the subject matter hereof or any default of the Owner's obligations under this agreement or the City exercising its rights under this agreement. This release and indemnity provision forms an integral part of all components and will survive termination or expiry of this agreement.
7. All notices, demands or requests of any kind which a party may be required or permitted to serve on another in connection with this agreement must be in writing and will be served on the other party by registered mail, fax or by personal service to:
 - (a) For the City:

City of Vancouver
453 West 12th Avenue
Vancouver, British Columbia V5Y 1V4

Attention: General Manager of Community Services
and Director, Housing Centre
 - (b) And for the Owner:

To the Owner's address as set out in the Land Title Office records relating to the Lands or such other address of which the Owner may notify the City according to the requirements of this Section.
8. Any notice delivered pursuant to this agreement:
 - (a) if delivered by registered mail, will be deemed complete seven days after the day of mailing except where there is a postal service disruption during such period in which case service should be deemed to be completed upon actual delivery of the notice, demand or request;

- (b) if delivered by fax, will be deemed complete on the third business day after the day when the facsimile transmission was transmitted; and
 - (c) if delivered by hand will be deemed complete two days after the day of delivery.
9. This agreement may be enforced by mandatory and prohibitory court orders. If in any action to enforce this Agreement the City is entitled to court costs from the Owner, then such costs will be payable to the City on an actual costs basis.
 10. Whenever the singular or masculine are used herein, the same will be construed as meaning the plural, feminine or body corporate or politic and vice versa where the context or the parties require.
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11. If any term of this agreement is held to be invalid, illegal or unenforceable by a court having the jurisdiction to do so, that term is to be considered to have been severed from the rest of this Agreement and the rest of this agreement remains in force unaffected by that holding or by the severance of that term.
 12. No alleged waiver of any breach of this agreement is effective unless it is an express waiver in writing of the breach in respect of which it is asserted against the party alleged to have given the waiver. No such waiver of any breach of this agreement operates as a waiver of any other breach of this Agreement.
 13. This is the entire agreement between the parties concerning the subject matter of this Agreement and it may only be amended by a document executed by both the City and the owners in fee simple of the Lands.
 14. Nothing contained or implied herein will prejudice or affect the City's rights and powers in the exercise of its functions pursuant to the Vancouver Charter, S.B.C. 1953, c. 55, as amended, and the rights and powers of the City under all of its public and private statutes, by-laws and regulations, all of which may be as fully and effectively exercised in relationship to the Lands as if this agreement had not been executed and delivered by the City and the Owner.
 15. The Owner will, after execution hereof, do or cause to be done, at its own cost and expense, all things and acts necessary to ensure that this Agreement is registered against title to the Lands with priority over all other encumbrances except encumbrances in favour of the City.
 16. This agreement will only be personally binding on the person(s) or entity(s) comprising the Owner in respect of matters arising within the period during which such person or persons respectively have any right, title or interest in the Lands or any part thereof.

17. If the Land Title Office rejects the registration of this agreement or any interest purported to be granted hereby, then the parties hereto will re-execute and re-register same in a form and style acceptable to the Land Title Office.
18. On the expiry of a period of 60 years after the first issuance of an occupancy permit or permits for full occupancy and use of the Dwelling Units, the City, at the Owner's expense, and within a reasonable time of the Owner's request, will execute such documents as the Owner presents to the City and deliver back to the Owner all such documents as executed to discharge this agreement from title to the Lands.

IN WITNESS WHEREOF the parties have executed this Agreement on Form C which is a part hereof.

END OF DOCUMENT