

Refers Item No.5
Public Hearing of July 20, 2010

MEMORANDUM

July 15, 2010

TO: Mayor Robertson and Councillors

CC: Dr. P. Ballem, City Manager
S.A. Johnston, Deputy City Manager
M. Coulson, City Clerk
D. McLellan, General Manager, Community Services
B. Toderian, Director of Planning
F. Connell, Director of Legal Services
P. Judd, Acting General Manager of Engineering Services

FROM: K. Munro, Assistant Director of Planning, Current Planning Division

SUBJECT: CD-1 Rezoning of 15 and 97 East 2nd Avenue and Heritage Revitalization Agreement at 97 East 2nd Avenue (Opsal Steel)

When the June 8th, 2010 Council Policy Report regarding this matter was presented to Council, staff had not completed the negotiation on all of the terms of the HRA and on the conditions of zoning approval for heritage. In the interest of allowing this application to proceed without delay to the July 20th public hearing, staff agreed to continue the negotiation and bring forward prior to the hearing any changes resulting from the finalized agreement.

This memorandum provides a revised Heritage Revitalization Agreement (HRA) for the above application including revised rezoning conditions.

RECOMMENDATION

THAT the draft Heritage Revitalization Agreement provided in Appendix D of the Policy Report titled "CD-1 Rezoning of 15 and 97 East 2nd Avenue and Heritage Revitalization Agreement at 97 East 2nd Avenue (Opsal Steel)", dated June 8, 2010, be replaced with the draft version attached to this memo.

FURTHER THAT the heritage rezoning conditions provided in Appendix B of the above report be revised as follows:

- Replace (c)3 of Appendix B with the following:

"(c)3. The Owner(s) enter into a Heritage Revitalization Agreement with the City generally in the form attached in Appendix D, incorporating, among other things, the following:

- (i) That all heritage rehabilitation work is to be carried out in compliance with, among other things, a heritage conservation plan approved by the City;
- (ii) That construction of the new west tower and any construction for the new east tower that consists of more than a bare concrete shell structure be prohibited until the rehabilitation of the heritage building is complete to the satisfaction of the Director of Planning and the City has received the Consultant's written confirmation that the work completed conforms with the Development Permit, with the Conservation Plan, and with the current Standards and Guidelines for the Conservation of Historic Places in Canada, as issued by Parks Canada;
- (iii) That, should the owner of the west site wish to proceed with construction of the new west tower in advance of completion of the rehabilitation work to the heritage building, the owner may obtain the permits required for that purpose if first the City is provided with a letter of credit for an amount equal to 120% of the then estimated cost to complete the rehabilitation work to the heritage building;
- (iv) That, should the owner of the east site prior to the completion of the rehabilitation work to the heritage building wish to proceed with any construction for the new east tower that consists of more than a bare concrete shell structure for it, the owner may obtain the necessary permits if first the City is provided with a letter or letters of credit, including the letter of credit referred to in the preceding paragraph, totalling an amount equal to 120% of the then estimated cost to complete the rehabilitation work to the heritage building. (Excavation and construction of the underground parking structure as well as construction of the concrete structure of the tower on the east site will be permitted without a letter of credit);
- (v) That the heritage building be secured from vandalism during construction;
- (vi) That a qualified restoration architect be retained to provide professional services relative to all aspects of the rehabilitation work;
- (vii) That the heritage building's rehabilitation be completed within 48 months of the issuance of the first development permit related to the proposed development on the east sit.

The Heritage Revitalization Agreement is to be registered on title to the lands to the satisfaction of the Director of Planning and of the Director of Legal Services.

- And add the following new heritage condition as (c)4 and renumber the remaining conditions:

- "(c)4. Secure the purchase and transfer of 11,986 sq. ft. of heritage bonus density to the receiver site (15 East 2nd Avenue) from the donor site (97 East 2nd Avenue).

Note to applicant: "Letter B" in the City's standard format is to be completed by both the owner of the "receiver" site and the owner of the "donor" site, and submitted to the City together with receipt(s) of heritage density purchase, including the amount, sale price, and total cost of the heritage density."

DISCUSSION

A draft HRA was provided as Appendix D of the June 8th Council Policy Report. This draft contained provisions for the City to secure the rehabilitation work on the Opsal Steel Building. Those provisions concerned letters of credit and land title covenants for which the applicant had financial and other concerns. After further negotiations, staff and the applicant arrived at alternate terms which mitigate the risk to both parties' satisfaction. The revised HRA attached to this memo contains the now agreed-to terms to secure the rehabilitation work. Not every page in the HRA document has changed from Appendix D of the Policy Report, but the entire legal document is replaced to ensure its consistency and completeness.

The conditions of approval for heritage, in Appendix B of the Policy Report, also need to change to align with the now agreed-to terms. Alternate conditions are provided in the above recommendation.

Essentially, what the revisions do to the HRA and the heritage conditions is add the provision of a no-development covenant on the west site (15 East 2nd Avenue) and permission to construct the underground parking and shell structure on the east site (97 East 2nd Avenue), prior to submitting a letter of credit, all in the interest of securing the completion of the rehabilitation work on the Opsal Steel Building.

Should Council approve the application, staff recommend approval at the same time of the above recommendation, so that the revised version of the HRA and the revised rezoning conditions are also adopted.

Kent Munro
Assistant Director of Planning
Current Planning Division

*tel: 604.873.7135
kent.munro@vancouver.ca*

Attachment: Revised Heritage Revitalization Agreement at 97 East 2nd Avenue

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 21 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)

SEE SCHEDULE

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):*

MONTREAL HOLDINGS LTD., incorporation no. 658597

0619933 B.C. LTD., incorporation no. 619933

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	
_____				MONTSAL HOLDINGS LTD. , by its authorized signatory(ies): _____ Print Name:
(Solicitor) (as to all signatures)				_____ Print Name:
_____				0619933 B.C. LTD , by its authorized signatory(ies): _____ Print Name:
(Solicitor) (as to all signatures)				_____ Print Name:

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 D
 EXECUTIONS CONTINUED

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 all signatures)				BANK OF MONTREAL, by its authorized signatory(ies): <hr/> Print Name: <hr/> Print Name:
<hr/> Bruce T. Quayle Solicitor 453 West 12 th Avenue Vancouver, BC, V5Y 1V4 Tel: 604-873-7714				CITY OF VANCOUVER by its authorized signatory: <hr/>

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.

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

(PID)	(LEGAL DESCRIPTION)
005-217-211	Lot 9 Block 8 District Lot 220A Plan 197
005-217-229	Lot 10 Block 8 District Lot 220A Plan 197
005-217-237	Lot 11 Block 8 District Lot 220A Plan 197
005-217-245	Lot 12 Block 8 District Lot 220A Plan 197
005-217-253	The East Half of Lot 13 Block 8 District Lot 220A Plan 197
007-647-638	Lot A Block 8 District Lot 220A Plan 15577

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 over Lot 9 Block 8 District Lot 220A Plan 197; Lot 10 Block 8 District Lot 220A Plan 197; Lot 11 Block 8 District Lot 220A Plan 197; Lot 12 Block 8 District Lot 220A Plan 197; East Half of Lot 13 Block 8 District Lot 220A Plan 197;	Article 2, pages 10 - 13	Transferee
Priority Agreement granting above Section 219 Covenant priority over Mortgage BX458212 and Assignment of Rents BX458213	page 21	Transferee
Statutory Right of Way over Lot 9 Block 8 District Lot 220A Plan 197; Lot 10 Block 8 District Lot 220A Plan 197; Lot 11 Block 8 District Lot 220A Plan 197; Lot 12 Block 8 District Lot 220A Plan 197; East Half of Lot 13 Block 8 District Lot 220A Plan 197;	Article 3, page 14	Transferee
Priority Agreement granting above Statutory Right of Way priority over Mortgage BX458212 and Assignment of Rents BX458213	page 21	Transferee
Section 219 Covenant over Lot A Block 8 District Lot 200A Plan 15577	Article 4, pages 14 - 15	
Priority Agreement granting above Section 219 Covenant priority over Mortgage BX458212 and Assignment of Rents BX458213	page 21	Transferee
Equitable Charge over Lot 9 Block 8 District Lot 220A Plan 197; Lot 10 Block 8 District Lot 220A Plan 197; Lot 11 Block 8 District Lot 220A Plan 197; Lot 12 Block 8 District Lot 220A Plan 197; East Half of Lot 13 Block 8 District Lot 220A Plan 197	Article 7, pages 16	Transferee
Priority Agreement granting above Equitable Charge priority over Mortgage BX458212 and Assignment of Rents BX458213	page 21	Transferee
Equitable Charge over Lot A Block 8 District Lot 200A Plan 15577	Article 8, page 17	Transferee
Priority Agreement granting above	page 21	Transferee

Equitable Charge priority over Mortgage
BX458212 and Assignment of Rents
BX458213

TERMS OF INSTRUMENT - PART 2

Heritage Revitalization Agreement 15 & 97 East 2nd Avenue

WHEREAS:

- A. The Transferor, Montsal Holdings Ltd., is the registered owner of the Heritage Lands (as defined below herein).
- B. The Transferor, 0619933 B.C. Ltd., is the registered owner of the Non-Heritage Lands (as defined below herein).
- C. The Heritage Lands are located at the civic address 97 East 2nd Avenue.
- D. The Non-heritage Lands are located at the civic address 15 East 2nd Avenue.
- E. The Heritage Lands and the Non-heritage Lands are separated by one parcel of land located between them at 33 East 2nd Avenue.
- F. There is a building, known as the Opsal Steel building, situated on the Heritage Lands, which is a former industrial-use building consisting of a north barn and south barn, with a connecting link between them, which is considered to have heritage value and is listed in the "A" category on the City's Heritage Register (the "**Heritage Building**", as further defined below).
- G. The Owners (as defined below herein) propose to develop the Heritage Lands by rehabilitating a portion of the Heritage Building and by constructing on the Heritage Lands a multi-use, residential, commercial and light industrial complex consisting of the Heritage Building, as rehabilitated, a new multi-storey tower building and underground parking and to develop the Non-heritage Lands by constructing thereon a new multi-storey, multi-use, residential and commercial tower building with underground parking (collectively, the "**Developments**").
- I. As a part of the Development, the Heritage Lands Owner proposes to dismantle the Heritage Building, remove it from the Heritage Lands and rehabilitate portions of it and, thereafter, reassemble, reinstall and conserve such rehabilitated portions of it on the Heritage Lands and, under the provisions of the *Vancouver Charter*, SBC 1953 c. 55 (the "**Vancouver Charter**"), in exchange for certain additional development rights to be assigned to the Heritage Lands, to enter into with the City a heritage revitalization agreement in respect of the Heritage Building and to accept the City's designation of the Heritage Building as a protected heritage property.

THEREFORE, pursuant to Section 592 of the *Vancouver Charter*, the parties agree as follows:

ARTICLE 1 DEFINITIONS AND INTERPRETATION

1.1 Definitions. In this agreement, unless explicitly used differently elsewhere herein, the terms defined in this section have the meanings given to them here:

- (a) **"Bonus Density"** means 55,100 square feet of additional Floor Space for the Heritage Lands;
- (b) **"Certified Professional"** has the meaning given in the City's *Building Bylaw 2007*;
- (c) **"City"** means the municipal corporation continued pursuant to the *Vancouver Charter* and **"City of Vancouver"** means the City's the geographic location;
- (d) **"City's bank of record"** means the bank or other financial institution the City primarily uses its banking activities;
- (e) **"Conservation Plan"** means a written plan and guidelines, as may be modified or supplemented from time to time with the prior written consent of the Director of Planning, prepared by and/or under the supervision of a Heritage Consultant for the rehabilitation, conservation and preservation of the Heritage Building;
- (f) **"Development Permit"** means a City development permit(s) issued under the City's *Zoning and Development Bylaw No. 3575* for the Development;
- (g) **"Floor Space"** means the size of a real property development or a portion of a real property development measured in building floor space area and calculated in accordance with City practices and/or the City's *Zoning and Development By-law No. 3575*;
- (h) **"Director of Planning"** means the chief administrator from time to time of the Planning Department of the City and his successors in function and their respective nominees;
- (i) **"Heritage Building"** means the Heritage Building as defined above in the recitals to this agreement and, more specifically, but without limitation, includes:
 - (i) two long gable-roofed ranges set parallel to each other and to 2nd Avenue, with two-storey high bays, and commonly known as the "North Barn" and the "South Barn";
 - (ii) a low-roof enclosed passageway, located at the mid-point area between the North Barn and South Barn and connecting the two;
 - (iii) an overhead travelling or gantry crane, including, without limitation, its supports, rails and lifting equipment;
 - (iv) a swinging pivot crane situated in the North Barn; and
 - (v) various artefacts, including casting moulds constructed of wood;
- (j) **"Heritage Consultant"** means an independent, heritage building conservation consultant who is knowledgeable and experienced in heritage building conservation planning and procedures and otherwise duly qualified to plan and supervise the conservation of heritage buildings;

- (k) **"Heritage Designation"** means the City, by way of by-law enacted pursuant to section 593 of the *Vancouver Charter*, designating the Heritage Building as a protected heritage property;
- (l) **"Heritage Lands"** means the lands and premises located at 97 East 2nd Avenue in the City of Vancouver, with the following legal descriptions:

PID	LEGAL DESCRIPTION
005-217-211	Lot 9 Block 8 District Lot 220A Plan 197
005-217-229	Lot 10 Block 8 District Lot 220A Plan 197
005-217-237	Lot 11 Block 8 District Lot 220A Plan 197
005-217-245	Lot 12 Block 8 District Lot 220A Plan 197
005-217-253	The East Half of Lot 13 Block 8 District Lot 220A Plan 197

- (m) **"Heritage Lands Owner"** means the registered owner or owners of the Heritage Lands;
- (n) **"Lands"** means both the Heritage Lands and the Non-Heritage Lands;
- (o) **"Non-Heritage Lands"** means the lands and premises located at 15 East 2nd Avenue in the City of Vancouver, with the following legal description:

PID	Legal Description
007-647-638	Lot A Block 8 District Lot 220A Plan 197

- (p) **"Non-Heritage Lands Owner"** means the registered owner or owners of the Non-Heritage Lands;
- (q) **"Owners"** means both the Heritage Lands Owner and the Non-Heritage Lands Owner;
- (r) **"rehabilitate"** **"rehabilitation"** means actions and processes aimed at restoring, upgrading and/or improving a heritage resource, such as, for example, a heritage building, so as to restore and/or conserve its heritage characteristics and value and extend its physical life;

ARTICLE 2
SECTION 219 COVENANT
HERITAGE LANDS

2.1 Pursuant to Section 219 of the *Land Title Act*, RSBC 1996, c.250 (the "*Land Title Act*"), the Heritage Lands Owner covenants and agrees, as covenants and agreements running with, charging and binding the Lands that, at the Heritage Lands Owner's expense, and at no expense to the City:

- (a) the Heritage Lands Owner will fully rehabilitate the heritage building to the satisfaction of the Director of Planning as follows:

- (i) within a period of 12 months after the date upon which this agreement is registered on title to the Heritage Lands, the Heritage Lands Owner will dismantle the Heritage Building and remove it from the Heritage Lands; and
- (ii) within no more than 48 months after the date upon which the first development permit is issued for the Heritage Lands in respect of the Developments, the Heritage Lands Owner will complete the rehabilitation of the Heritage Building in all respects, including, without limitation, the reassembly and reinstallation of it on the Heritage Lands,

all in accordance with the all Development Permits the City may issue in respect of the rehabilitation of the Heritage Building, a Conservation Plan explicitly approved by the City, the current Standards and Guidelines for the Conservation of Historic Places in Canada as issued by Parks Canada, and this agreement (collectively, the "Rehabilitation Work");

- (b) the Heritage Lands Owner, to the satisfaction of the Director of Planning, will ensure that a Heritage Consultant supervises all aspects of the Rehabilitation Work;
- (c) the Heritage Lands Owner, to the satisfaction of the Director of Planning, will ensure that the Heritage Building is secure from occupation by squatters and vandalism at all times during the carrying out of the Rehabilitation Work;
- (d) on completion of the Rehabilitation Work as required by this agreement, the Heritage Lands Owner will cause a Heritage Consultant to submit to the Director of Planning, in form and content to his or her satisfaction, a signed statement stating explicitly that the Rehabilitation Work has been fully completed in accordance with the Conservation Plan approved by the City hereunder;
- (e) at all times after the date upon which this agreement is registered on title to the Heritage Lands, the Heritage Lands Owner, in accordance with the Conservation Plan approved by the City hereunder, and to the satisfaction of the Director of Planning, will conserve the Heritage Building as rehabilitated and as reassembled and reinstalled on the Heritage Lands in accordance with this agreement and, in any event, in good condition in all respects as would a reasonable and prudent owner;
- (f) the Heritage Lands Owner will not at any time after completion of the Rehabilitation Work or cause, permit or suffer anyone to in any way alter the exterior, make structural changes, or renovate or reconfigure the Heritage Building or any part thereof, except as may be permitted by this agreement or any development or heritage alteration permits issued by the City;
- (g) the Heritage Lands Owner will not at any time and will not suffer or cause any other person at any time to obscure, deface or remove any heritage related commemorative plaque the City may attach to the Heritage Building pursuant to the statutory right of way granted to it herein;

- (h) at all times after this agreement is registered on title to the Heritage Lands, the Heritage Lands Owner will keep the Heritage Building insured to its full replacement value against all perils, including, without limitation, damage or destruction by earthquake;
- (i) if at any time the Heritage Building is damaged in any way or destroyed, the Heritage Lands Owner, to the City's satisfaction, will repair the damage or replace the Heritage Building with a replica building, unless it would be lawful or, in the City's opinion, uneconomical or unfair for the Heritage Lands Owner to be required to do so. In determining whether it would be uneconomical or unfair for the Heritage Lands Owner to be required to repair or replace the Heritage Building in such circumstances, the City, in consultation with the Heritage Lands Owner, will consider land related economic factors, including, without limitation, the estimated out-of-pocket expense to the Heritage Lands Owner for the repair or replacement of the Heritage Building and whether the Heritage Lands Owner has complied with the insurance provisions of this agreement, and if the City determines that in its opinion it would be uneconomical or unfair for the Heritage Lands Owner to be required to repair or replace the Heritage Building, then, within a reasonable time of the Heritage Lands Owner's request, to the extent the City reasonably considers to be appropriate, the City will execute and deliver a modification or a partial or full discharge of this agreement to reflect such change in circumstance;
- (j) the Heritage Lands Owner will not at anytime carry out any construction or permit any construction of any new building on the Heritage Lands except pursuant to a staged building permit applied for and obtained by a Certified Professional pursuant to the provisions of the City's *Building Bylaw 2007* and by which the completion of the construction of a bare concrete shell structure therefor will mark the end of a portion or stage of the total construction thereof;
- (k) notwithstanding that the Heritage Lands Owner may otherwise be entitled, the Heritage Lands Owner will not at anytime carry out any construction or permit any construction for any new building on the Heritage Lands that consists of anything more than a bare concrete shell structure therefor and the City will not be obligated in any way to issue any building permit for any such construction unless and until:
 - (i) the Rehabilitation Work has been completed in accordance with this agreement; or
 - (ii) the City has possession, as security in relation to the Rehabilitation Work, of a letter of credit in the City's favour, from a financial institution and in a form satisfactory to the City, for not less than 120% of the then estimated cost to complete the Rehabilitation Work in accordance with this agreement, with such estimate to be made in writing by the Consultant and explicitly accepted in writing by the City.
- (l) if at anytime before completion of the Rehabilitation Work or the City receiving a letter of credit in accordance with the preceding subparagraph any building permit is issued inadvertently or otherwise for the construction of any

new building on the Heritage Lands consisting of anything more than a bare concrete shell structure therefor, the City may revoke such building permit at anytime, and in such circumstances the Heritage Lands Owner will ensure that all construction carried out pursuant to any such permit is discontinued immediately on notification from the City, and if such construction continues thereafter it will be a breach of this agreement and any applicable City bylaws, and the City may pursue all remedies available to it, including, without limitation, injunctive relief, to ensure that such construction is stopped; and

- (m) the Heritage Lands Owner will indemnify the City for any and all complaints, demands, claims, actions, suits and judgment for any loss, injury, damage or expense anyone may suffer, incur or experience arising in connection with this agreement.

2.2 If the Heritage Lands Owner at anytime, in default of this agreement, fails to carry out the Rehabilitation Work or to conserve or replace the Heritage Building as required hereby, and if the Heritage Lands Owner fails to rectify any such default after 30 days notice from the City to do so, the City, on the Heritage Lands Owner's behalf and at the Heritage Lands Owner's expense, may, but will be under not be obligated to, rectify the Heritage Lands Owner's default.

2.3 In addition to any other remedies available to it under this agreement, the City may pursue all remedies available to it in law and in equity in respect of any Heritage Lands Owner breach of this agreement, and, in such circumstances, in addition to any other remedies available to it, the City will be entitled to obtain injunctive relief for the enforcement of the provisions of this Article of this agreement without being required to demonstrate that, in the absence of the injunctive relieve sought, the City might, will or probably will suffer any irreparable harm or any harm at all.

2.4 Notwithstanding any other provision of this agreement, nothing herein requires the City to exercise any of the rights granted to it by way of the statutory right of way contained herein to rehabilitate, conserve or replace the Heritage Building.

2.5 The Heritage Lands Owner may not make any use of the Bonus Density other than as provided for in this agreement and the Development Permit.

ARTICLE 3 STATUTORY RIGHT OF WAY HERITAGE LANDS

3.1 Pursuant to Section 218 of the *Land Title Act*, the Heritage Lands Owner hereby grants to the City a statutory right of way to enter, be and move about on the Heritage Lands to install, maintain, repair and replace on the exterior of the Heritage Building, in consultation with the Heritage Lands Owner as to location thereon, a heritage related commemorative plaque regarding the Heritage Building and, in the event the Heritage Lands Owner is in default of any of its obligations under this agreement to carry out the Rehabilitation Work or to conserve and/or replace the Heritage Building, to carry out any such obligations of the Heritage Lands Owner hereunder, if the City should at any time choose to do so in accordance with and pursuant to this agreement.

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

**ARTICLE 4
SECTION 219 COVENANT
NON-HERITAGE LANDS**

4.1 Pursuant to Section 219 of the *Land Title Act*, the Non-Heritage Lands Owner covenants and agrees, as covenants and agreements running with, charging and binding the Non-Heritage Lands, that:

- (a) notwithstanding that the Non-Heritage Lands Owner may otherwise be entitled, the Non-Heritage Lands Owner will not at anytime construct or permit the construction of any building on the Non-Heritage Lands and the City will not be obligated in any way to issue any development or building permits therefor unless and until:
 - (i) the Rehabilitation Work has been completed in accordance with this agreement; or
 - (ii) the City has possession, as security in relation to the Rehabilitation Work, of a letter of credit in the City's favour, from a financial institution and in a form satisfactory to the City, for not less than 120% of the then estimated cost to complete the Rehabilitation Work in accordance with this agreement, with such estimate to be made in writing by the Consultant and explicitly accepted in writing by the City; and
 - (iii) the Bonus Density has been duly assigned to the Heritage Lands and 11,986 square feet of the Bonus Density has been duly transferred to the Non-Heritage Lands pursuant to the City's Heritage Bonus Density and Transfer of Heritage Bonus Density policies and practices;
- (b) the City may revoke at anytime any development or building permit(s) issued for the Non-Heritage Lands, inadvertently or otherwise, prior to completion of the Rehabilitation Work or the City receiving a letter of credit as described in the preceding sub-paragraph, and in such circumstances the Non-Heritage Lands Owner will ensure that all construction commenced under any such permit is discontinued immediately on notification from the City, and if such construction or occupancy thereof continues thereafter it will be a breach of this agreement and any applicable City bylaws, and the City may pursue all remedies available to it, including, without limitation, injunctive relief, to ensure that such construction is stopped; and
- (c) the Non-Heritage Lands Owner will indemnify the City for any and all complaints, demands, claims, actions, suits and judgment for any loss, injury, damage or expense to anyone arising in connection with this agreement.

4.2 In addition to any other remedies available to it under this agreement, the City may pursue all remedies available to it in law and in equity in respect of any Non-Heritage Lands Owner breach of this agreement, and, in such circumstances, in addition to any other remedies available to it, the City will be entitled to obtain injunctive relief for the enforcement of the provisions of this Article of this agreement without being required to

demonstrate that, in the absence of the injunctive relieve sought, the City might, will or probably will suffer any irreparable harm or any harm at all.

4.3 The City, at the Non-Heritage Land Owner's expense, and within a reasonable time of the Non-Heritage Land Owner's request, after the Rehabilitation Work has been completed in accordance with this agreement, will discharge from title to the Non-Heritage Lands the Section 219 Covenant contained in this Article 4, provided neither the Heritage Lands Owner nor the Non-Heritage Lands Owner owes any money to the City under this agreement or in connection with the subject matter of this agreement.

ARTICLE 5 LETTERS OF CREDIT - GENERAL

5.1 All letters of credit required by this agreement will be issued by a Schedule I Canadian chartered bank and will be unconditional, irrevocable and self-renewing and otherwise in a form and content which is acceptable to the City and will be provided for a period of one (1) year with a provision for an automatic renewal or extension without amendment from year to year until the Heritage Lands Owner has, to the City's full satisfaction, completed the Rehabilitation Work in accordance with this agreement.

5.2 Notwithstanding any other provision of this agreement, as the estimated cost to complete Rehabilitation Work diminishes over time as it is carried out, the City will accept replacement letters of credit from time to time to reduce the amounts of security thereby held by the City for the Rehabilitation Work so that such amounts of security so held by the City will correspond more closely with the reduced estimated cost to complete the Rehabilitation Work, provided that such replacement letters of credit all are provided in accordance with this agreement.

5.3 The City may call upon any letter(s) of credit provided to it hereunder and apply the proceeds therefrom in any manner and for any purpose as the City sees fit, if:

- (a) the bank issuing the letter of credit refuses to extend or renew the expiry date of the letter of credit;
- (b) either of the Non-Heritage Lands Owner or the Heritage Lands Owner becomes or has become insolvent or commits any act of bankruptcy or becomes bankrupt or takes the benefit of any act or legislation that may be enforced for bankrupts or insolvent debtors;
- (c) the Heritage Lands Owner is not carrying out or has not carried out the Rehabilitation Work as required under this agreement;
- (d) the City undertakes all or any part of the Rehabilitation Work pursuant to this agreement; and/or
- (e) the Heritage Lands Owner is in breach of any of its obligations under this agreement.

ARTICLE 6 DEBTS OWED TO CITY

6.1 If the City, pursuant to this agreement, enters upon the Heritage Lands to carry out any of the Heritage Owner's obligation hereunder to carry out any of the Rehabilitation Work or to conserve or replace the Heritage Building:

- (a) there will be no express or implied warranties as to the quality of any work the City may so carry out or the suitability of the materials for the purposes for which they are put; and
- (b) the Heritage Owner and/or the Non-Heritage Owner, being jointly and severally liable, will pay to the City, forthwith on demand, the full amount of all costs the City incurs to rehabilitate, conserve or replace the Heritage Building, plus 20% of such costs as fair compensation for the City's overhead, and any such amounts not paid to the City forthwith on demand will bear interest, until paid in full, at the prime lending rate of the City's bank of record, plus 2%, calculated monthly and not in advance.

**ARTICLE 7
EQUITABLE CHARGE
HERITAGE LANDS**

7.1 The Heritage Lands 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 to the City under the terms of this agreement or otherwise at law in connection with the subject matter of this agreement.

7.2 The equitable charge the Heritage Lands Owner has granted to the City herein may be enforced by the appointment of a receiver for the sale of the Heritage Lands.

**ARTICLE 8
EQUITABLE CHARGE
NON-HERITAGE LANDS**

8.1 The Non-Heritage Lands Owner hereby grants to the City an equitable charge over the Non-Heritage 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 to the City under the terms of this agreement or otherwise at law in connection with the subject matter of this agreement.

8.2 The equitable charge the Non-Heritage Lands Owner has granted to the City herein may be enforced by the appointment of a receiver for the sale of the Non-Heritage Lands.

8.3 The City, at the Non-Heritage Land Owner's expense, and within a reasonable time of the Non-Heritage Land Owner's request, after the Rehabilitation Work has been completed in accordance with this agreement, will discharge from title to the Non-Heritage Lands the equitable charge contained in this Article 8, provided neither the Heritage Lands Owner nor the Non-Heritage Lands Owner owes any money to the City under this agreement or in connection with the subject matter of this agreement.

ARTICLE 9 RELEASE AND INDEMNITY

9.1 The Owners hereby releases, and each of them hereby releases, the City and its officials, officers, employees and agents from any liability for any loss, injury, damage or expense of any kind the Owners or either of them may suffer, incur or experience and the Owners will indemnify the City for any loss, injury, damage or expense the City may incur, suffer or experience and for any complaint, demand, claim, action, suit or judgment for any loss, injury, damage or expense anyone else may suffer, incur or experience arising out of or in any way connected with:

- (a) the City carrying out any of the Rehabilitation Work or any other work contemplated by this agreement;
- (b) the City withholding any permits (including, without limitation, any occupancy permits) under this agreement, until the Heritage Lands Owner has fully complied with all the Rehabilitation Work requirements of in this agreement;
- (c) this agreement, except to the extent the same arises directly and solely from a default of the City;
- (d) any release of this agreement or the loss of any of the rights granted hereunder;
- (e) the non-compliance, if any, of the Lands or either of them or the Heritage Building or any part of either thereof with any City by-law; or
- (f) the issuance of any development permit(s) for the Development.

9.2 The Heritage Lands Owner acknowledges and agrees that, notwithstanding that this agreement and the Heritage Designation will result in restrictions with respect to the future use and development of and may affect the value of the Heritage Lands, the Heritage Lands Owner has received full and fair compensation for entering into this agreement and accepting the Heritage Designation and the Heritage Lands Owner hereby waives and renounces any and all claims for any further or other compensation by reason of this agreement and/or the Heritage Designation and acknowledges that the requirements of Section 595(1) of the *Vancouver Charter* SBC 1953 c.55 have been fully satisfied.

9.3 The release, promise of indemnity and the other acknowledgements and agreements contained in this Article are an integral part of the Section 219 Covenants granted herein and the rest of this agreement and, in any event, will survive the expiry or earlier termination of this agreement and will survive any modification, release or partial release of any of the covenants created by this agreement and will be personal covenants of the Owners and each of them.

ARTICLE 10 NOTICES

10.1 Notices. Any notice, request or communication required or permitted to be given hereunder will be in writing and will be deemed to have been duly given if delivered to the party or mailed in Canada by prepaid registered post addressed to the party as follows:

(a) if to the Owner's or either of them:

to their addresses or its address as shown in the Land Title Officer records

(b) if to the City:

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

Attention: City Clerk and Director of Legal Services;

or to such other address in Canada as any party may specify in writing to the other parties, provided that if and when the owner of any parcel of land should change, then to the address as set out in the State of Title Certificate for that particular parcel of land, or, if strata-titled, the address of the strata corporation in the records of the Land Title Office, and such notice will be deemed to have been received, if delivered, on the date of delivery, and if mailed as aforesaid within Canada then on the third business day following its mailing, provided that if mailed, should there be between the time of the mailing and the actual receipt of the notice, a mail strike, slowdown or other labour dispute which might affect delivery of such notice, then such notice will only be effective if and when actually delivered.

ARTICLE 11 GENERAL

11.1 Joint and Several Liability. Where the any of the Owners' obligations hereunder are joint obligations, the Owners will be jointly and severally liable for the performance and in respect of any non-performance or mis-performance thereof, and if either of the Owners consists in any way of more than one person and/or entity, then all such persons and entities shall be jointly and severally liable to the City for the performance and observance and in respect of any non-performance or mis-performance of such Owner's obligations in this agreement.

11.2 Priority of Registration. The Owners, at their expense, after execution of this agreement, shall 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 encumbrances on title to the Lands as the City may require.

11.3 Perfection of Intention. The parties hereto will do such things and execute such further and other documents and instruments and do such further and other acts as may be reasonably necessary to implement and carry out the provisions and intent of this agreement and to ensure timely and effective registration in the Land Title Office.

11.4 Waiver. No failure on the part of the City to exercise and no delay in exercising any right under this agreement will operate as a waiver thereof nor will any single or partial exercise by the City of any right under this agreement preclude any other or future exercise thereof or the exercise of any other right. The remedies herein provided will be cumulative and not exclusive of any other remedies provided by law and all remedies stipulated for the City herein will be deemed to be in addition to and not, except as herein expressly stated, restrictive of the remedies of the City at law or in equity.

11.5 Time of Essence. Time will be of the essence in respect of this agreement.

11.6 Enurement. This agreement shall enure to the benefit of and be binding upon the Owners and their successors and trustees, and this agreement shall charge and run with the Lands and with any parcel, lot or part into which the Lands may be subdivided or consolidated and shall enure to the benefit of and be binding upon the Owners' successors in title and trustees and successors and all parties claiming through such owners.

11.7 City's Other Rights and Obligations. Nothing contained or implied in this agreement will derogate from the obligations of the Owners under any other agreement with the City or prejudice or affect the City's rights, powers, duties or obligations in the exercise of its functions pursuant to the *Vancouver Charter* SBC 1953 c.55 and the rights, powers, duties and obligations of the City under all other laws, 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 Owners and the City.

11.8 Headings. The division of this agreement into articles, sections and paragraphs and the insertion of headings are for the convenience of reference only and will not affect the construction or interpretation of this agreement.

11.9 Number. Words contained herein 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.

11.10 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.

11.11 Severability. All provisions of this agreement are severable in that if any court or other lawful authority having jurisdiction to decide the matter finds for any reason that one or more of them is void or unenforceable, then such void or unenforceable provisions will be severed from this agreement and all other provisions herein will continue to be binding and enforceable.

11.12 City Approvals. In this agreement, where City "approval", "acceptance", "consent" or similar authorization or agreement is required, unless provided for otherwise in this agreement, such "approval", "acceptance", "consent" or similar City agreement or authority must be provided in writing, by the City departments, employees, officers or designates, as the case may be, that are authorized to provide such "approval", "acceptance", "consent" or similar authorization or agreement. Any purported "approval", "acceptance" "consent" or similar authorization or agreement provided by a City department, employee, officer or designate, as the case may be, that is not authorized to provide the same, shall be of no force or effect.

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

CONSENT AND PRIORITY INSTRUMENT

In this consent and priority instrument:

- (a) "Existing Charges" mean the Mortgage registered under number BX458212 and Assignment of Rents registered under number BX458213;
- (b) "Existing Chargeholder" means Bank of Montreal;
- (c) "New Charges" mean the Section 219 Covenants, the Statutory Right of Way and the Equitable Charges contained in the attached Terms of Instrument - Part 2; and
- (d) words capitalized in this instrument, not otherwise defined herein, have the meaning ascribed to them in the attached Terms of Instrument - Part 2.

For \$10.00 and other good and valuable consideration, the receipt and sufficiency of which the Existing Chargeholder acknowledges, the Existing Chargeholder:

- (i) consents to the Owners granting the New Charges to the City; and
- (ii) agrees with the City that the New Charges charge the Land in priority to the Existing Charges in the same manner and to the same effect as if the Owner had granted the New Charges, and it had been registered against title to the Lands, prior to the grant or registration of the Existing Charges or the advance of any money under the Existing Charges.

To witness this consent and priority instrument, the Existing Chargeholder has caused its duly authorized signatories to sign the attached General Instrument - Part 1.

END OF DOCUMENT