

EXPLANATION**Subdivision By-law No. 5208 amending By-law
Re: 605-645 West 41st Avenue**

Enactment of the attached By-law will delete 605-645 West 41st Avenue from the maps forming part of Schedule A of the Subdivision By-law, and implement Council's resolution of October 19, 2010 dealing with the rezoning of the property, and is consequential to the rezoning of the property.

Director of Legal Services
January 15, 2013

605-645 West 41st Avenue



BY-LAW NO. _____

A By-law to amend Subdivision By-law No. 5208

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

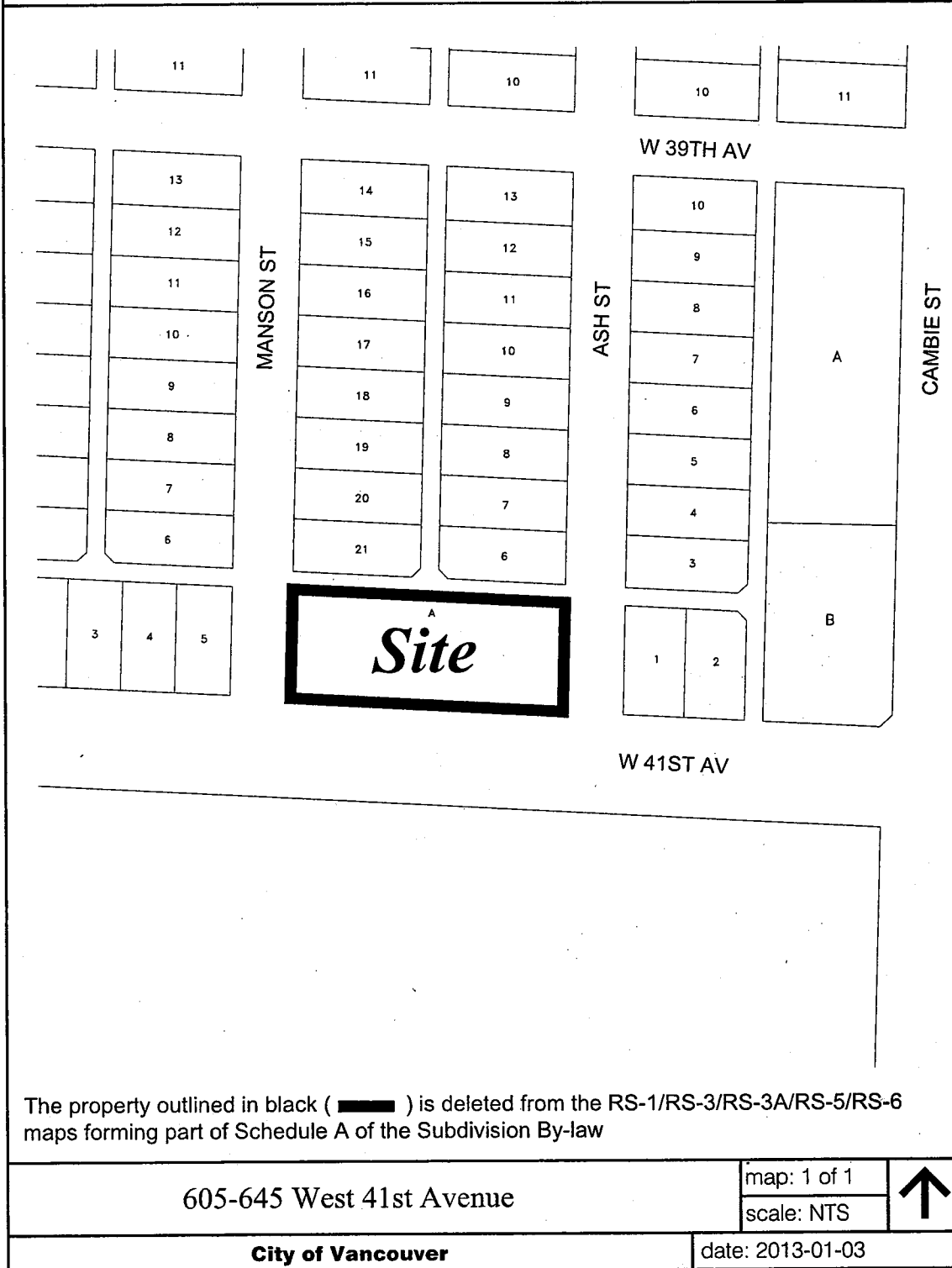
1. Council amends Schedule A to the Subdivision By-law in accordance with the plan labelled Schedule A, and attached to and forming part of this By-law, by deleting therefrom the properties shown in black outline on Schedule A to this By-law, in accordance with the explanatory legends, notations, and references incorporated therein.
2. This By-law is to come into force and take effect on the date of its enactment.

ENACTED by Council this _____ day of _____, 2013

Mayor

City Clerk

By-law No. _____ being a By-law to amend By-law No. 5208
being the Subdivision By-law



The property outlined in black (**Site**) is deleted from the RS-1/RS-3/RS-3A/RS-5/RS-6 maps forming part of Schedule A of the Subdivision By-law

605-645 West 41st Avenue

map: 1 of 1
scale: NTS



City of Vancouver

date: 2013-01-03

EXPLANATION**Noise Control By-law amending By-law No. 6555
Re: Housekeeping**

A housekeeping amendment is necessary to correct an internal numbering error in section 14D of the Noise Control By-law.

Director of Legal Services
January 15, 2013



BY-LAW NO. _____

**A By-law to amend Noise Control By-law No. 6555
regarding housekeeping**

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

1. This By-law amends the indicated provisions of the Noise Control By-law.
2. In Section 14D, Council strikes out "14B" and substitutes "14C".
3. 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.
4. This By-law is to come into force and take effect on the date of its enactment.

ENACTED by Council this _____ day of _____, 2013

Mayor

City Clerk

EXPLANATION**Authorization to enter into a
Heritage Revitalization Agreement
Regarding 833 Keefer Street**

After a public hearing on December 11, 2012, Council resolved to enter into a Heritage Revitalization Agreement regarding 833 Keefer Street, pursuant to Section 592 of the *Vancouver Charter*. Enactment of the attached By-law will achieve this.

Director of Legal Services
January 15, 2013

833 Keefer Street
The Christenson Residence



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 833 Keefer Street, and the following legal description:

PID: 015-575-276
W 24 Feet of LOT 34
BLOCK 77
DISTRICT LOT 181
PLAN VAP 196

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 , 2013

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 14 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)

015-575-276

The West 24 Feet of Lot 34 Block 77 District Lot 181 Plan 196

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)/CHARGEHOLDER(S):*

ELIZABETH JANE EVANS, Executive Director

MARK TOWNSEND, Executive Director

COAST CAPITAL SAVINGS CREDIT UNION, 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/Notary)				_____ ELIZABETH JANE EVANS
_____ (Solicitor/Notary)				_____ MARK TOWNSEND
_____ (Solicitor/Notary) (as to all signatures)				COAST CAPITAL SAVINGS CREDIT UNION, by its authorized signatory(ies): _____ Print Name: _____ 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 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	Article 2, pages 7-10	Transferee
Priority Agreement granting above Section 219 Covenant priority over Mortgage CA979829	Page 15	Transferee
Statutory Right of Way	Article 3, page 11	Transferee
Priority Agreement granting above Statutory Right of Way priority over Mortgage CA979829	Page 15	Transferee
Equitable Charge	Article 5, page 11 - 12	Transferee
Priority Agreement granting above Equitable Charge priority over Mortgage CA979829	Page 15	Transferee

TERMS OF INSTRUMENT - PART 2
Heritage Revitalization Agreement

WHEREAS:

- A. The Owner (as defined below herein) is the registered owner of the parcel of land at 833 Keefer Street in City of Vancouver (the “Lands”) which has the legal description shown in the Form C - Part 1 part of this document.
- B. There is a building situated on the Lands, known as ‘The Christenson Residence’, which is considered to be of heritage value (the “Heritage Building”).
- C. The Owner wishes to develop the Lands by:
- (i) rehabilitating the Heritage Building; and
 - (ii) constructing a new Infill Dwelling building thereon,
- and under development permit application no. DE415544 (the “DP Application”) has applied to the City for a development permit for that purpose.
- D. The Owner proposes that, in exchange for a number of City by-law variations needed for the proposed project as contemplated under the DP Application, the Owner will enter into a heritage revitalization agreement in respect of the Heritage Building, for the rehabilitation and conservation thereof, and accept the designation of it as protected heritage property under the provisions of the *Vancouver Charter SBC 1953 c.55*.

THEREFORE, pursuant to Section 592 of the *Vancouver Charter SBC 1953 c.55*, and in consideration of the payment \$10 by the City to the Owner, the mutual obligations and benefits given herein and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties agree as follows:

ARTICLE 1
DEFINITIONS

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) “City” means the municipality of the City of Vancouver continued under the *Vancouver Charter* and “City of Vancouver” means its geographic location and area;
- (b) “Conservation Plan” means a written plan and guidelines prepared by and/or under the supervision of a Heritage Consultant and explicitly accepted by the City for the rehabilitation and conservation of the Heritage Building as provided for hereunder;
- (c) “Development” means the proposed development project as described above in the introductory paragraphs hereto to rehabilitate the Heritage Building and construct an Infill Dwelling on the Lands pursuant to the DP Application;
- (d) “Development Permit” means any development permit(s) issued by the City under the DP Application in respect of the Development, as such permit(s) may

be modified or amended from time to time, including, without limitation, all final reports, plans, drawings and specifications relating thereto;

- (e) **“Director of Planning”** means the chief administrator from time to time of the City’s Planning Department and his or her successors in function and their respective nominees;
- (f) **“DP Application”** has the meaning given above in the introductory paragraphs hereto;
- (g) **“Heritage Building”** has the meaning given above in the introductory paragraphs herein;
- (h) **“Heritage Consultant”** means an independent, heritage building rehabilitation and conservation expert, knowledgeable and experienced in and duly qualified for planning and supervising rehabilitation and conservation work for heritage buildings;
- (i) **“Heritage Designation”** means the City’s designation of the Heritage Building as a protected heritage property pursuant to section 593 of the *Vancouver Charter*;
- (j) **“Infill Dwelling”** has the meaning given under the *Zoning & Development By-law*;
- (k) **“Lands”** has the meaning given above in the introductory paragraphs hereto and includes any other parcels of land into which the Lands may at any time in any way be consolidated or subdivided;
- (l) **“Land Title Act”** means the *Land Title Act*, R.S.B.C. 1996, c.250;
- (m) **“New Building”** means any and all new buildings and other structures constructed on the Lands after this agreement is first registered on title to the Lands;
- (n) **“Owner”** means the registered owner or owners of the Lands;
- (o) **“rehabilitate”** and **“rehabilitation”** mean the planning and carrying out of restoration, rehabilitation, construction and conservation work to restore, upgrade, improve and conserve the structure, support and heritage characteristics and features of a heritage building or real property heritage feature so as to revitalize it and extend its life and use as such;
- (p) **“Rehabilitation Work”** has the meaning given below herein;
- (q) **“Vancouver Charter”** means the *Vancouver Charter*, S.B.C. 1953, c.55, 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;
- (r) **“Zoning & Development By-law”** means the City’s *Zoning & Development By-law No. 3575* and any amendments thereto and replacements thereof.

ARTICLE 2
SECTION 219 COVENANT
Rehabilitation & Conservation of Heritage Building

2.1 Pursuant to Section 219 of the *Land Title Act*, the Owner covenants and agrees, as a covenant and agreement running with, charging and binding the Lands, that:

- (a) the Owner, at the Owner's expense, and to the satisfaction of the Director of Planning:
 - (i) within 24 months after the date upon which the Development Permit is issued, plus any additional time by which the date of expiry of the Development Permit may be extended under the provisions of the *Zoning and Development By-law*, but in any event by no later than 30 months after the date upon which this covenant is registered on title to the Lands, shall rehabilitate or cause the rehabilitation of the Heritage Building and shall do so in accordance with this agreement, the Development Permit and the Conservation Plan (the "Rehabilitation Work");
 - (ii) shall ensure that a Heritage Consultant supervises the Rehabilitation Work;
 - (iii) shall ensure that, at all times during the carrying out of the Rehabilitation Work, the Heritage Building is secure from vandalism and occupation by squatters;
 - (iv) at all times after and while this agreement is registered on title to the Lands, shall keep the Heritage Building insured to its full replacement value against all perils, including, without limitation, damage or destruction by earthquake; and
 - (v) on completion of the Rehabilitation Work as required by this agreement, shall cause a Heritage Consultant to submit to the Director of Planning, a signed statement stating explicitly that the Rehabilitation Work has been completed in accordance with the Conservation Plan;
- (b) nobody will in any way use or occupy the New Building or any part thereof and nobody will apply for or take any other action to compel the City, and, notwithstanding that the New Building may be ready for occupancy, the City will be under no obligation to issue any occupancy permit for the New Building or any part of it at any time after this agreement is registered on title to the Lands, until:
 - (i) the Rehabilitation Work has been completed in accordance herewith;
 - (ii) the Owner, as required above herein, has submitted or caused to be submitted to the Director of Planning a signed written statement prepared by a Heritage Consultant stating explicitly that the Rehabilitation Work has been completed in accordance with the Conservation Plan; and

- (iii) the City has given the Owner a written notice or confirmation by which the City explicitly accepts or confirms its acceptance that the Rehabilitation Work has been completed in accordance herewith;
- (c) the City may revoke at anytime any occupancy permit(s) issued for the New Building prior to completion of the Rehabilitation Work, unless such occupancy permit(s) was obtained in accordance with this agreement, and in such circumstances the Owner, on reasonable notice from the City, will ensure that anyone occupying any part of any such building vacates it immediately on such revocation of occupancy permit(s), and if anyone continues to occupy any portion of any part of the New Building in contravention of such revocation, this agreement and any applicable City bylaws, the City, at the Owner's expense, may pursue all remedies available to it, including, without limitation, injunctive relief, to ensure that the New Building is vacated and unoccupied in accordance with this agreement;
- (d) after completion of the Rehabilitation Work in accordance herewith, the Owner, at the Owner's expense, will do all things reasonably necessary to conserve the Heritage Building as rehabilitated and, in any event, keep it in good condition in all respects at all times;
- (e) except for maintenance and repair work, the Owner will not and will not suffer or permit anyone else to do anything at anytime to renovate, alter, modify or reconfigure or that will result in any alteration, modification or reconfiguration of the Heritage Building in any way except as may be permitted or required by this agreement, the Conservation Plan and/or any development and/or heritage alteration permits issued by the City;
- (f) the Owner shall not at any time and shall not suffer or permit anyone else to at anytime do anything that will obscure, deface or remove in any way any heritage related commemorative plaque the City, at its expense, may attach to the Heritage Building pursuant to the statutory right of way granted to it herein;
- (g) if at any time for any reason the Heritage Building is damaged in any way or destroyed, the Owner, at the Owner's expense, and to the City's satisfaction, shall repair it or replace it with a replica building, except that if the Owner *bona fide* believes that to do so would be uneconomical, in which case, and if for that reason the Owner wishes to demolish it as damaged or wishes not to replicate it, as the case may be, the Owner, at the Owner's expense, and in consultation with and to the satisfaction of the City, will prepare an economic analysis therefor, but taking into consideration only land related economic factors, such as, for example, but without limitation, the estimated cost to repair or replicate the Heritage Building, as the case may be, the anticipated market value of the repaired or replicated building, the incentives given by the City for this agreement and the Heritage Designation, the estimated value of the Lands under the zoning otherwise applicable thereto, after which the City and the Owner, together, on the basis of that analysis, will determine whether in the circumstances it would be uneconomical to repair or replicate the Heritage Building, failing which the matter in all respects will be determined by arbitration in accordance with the provisions of the *Commercial Arbitration*

Act RSBC 1996 c. 55, and if the Owner and the City agree or if in arbitration it is determined that it would be uneconomical for the Owner to be required to repair or replicate the Heritage Building, then, by explicit written notification, the City will consent to the Owner's wish to not repair or replicate the Heritage Building and will discharge this agreement from title to the Lands and the Owner may request of the City's Mayor and Council that the Heritage Designation be cancelled; and

- (h) the 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 and therefore may affect the value of the Lands, the Owner has received full and fair compensation therefor and the 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 and agrees that the requirements of Section 595(1) of the *Vancouver Charter SBC 1953 c.55* have been fully satisfied, and the Owner 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 Owner may suffer, incur or experience and the Owner 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 this agreement and/or the Heritage Designation. The release and promise of indemnification contained in this paragraph will survive discharge and termination of this agreement.

2.2 Notwithstanding the occupancy restrictions set out above in respect of the New Building, the City, in its discretion, may issue occupancy permits therefor and on that basis it may be occupied prior to the time that the Rehabilitation Work is completed in accordance herewith, provided:

- (a) the Owner duly applies to the City for any and all occupancy permits required therefor and pays all fees required therefor;
- (b) this agreement has been fully registered in the Land Title Office to the City's satisfaction;
- (c) the City has issued a building permit and/or heritage alteration permit in respect of the Rehabilitation Work;
- (d) all legal requirements for occupancy of the New Building have been fulfilled;
- (e) the Owner has delivered to the City, in all respects to the City's satisfaction, a letter of credit in the amount equal to one hundred and twenty percent (120%) of the then estimated cost to complete the Rehabilitation Work, with such estimate to be made in writing by the Consultant and explicitly accepted in writing by the City;
- (f) the Owner, at the time of application for any such occupancy permits, is not, in the City's opinion, in breach of any of its obligations under this agreement or any other agreement between the City and the Owner with respect to the Heritage Building and/or the Lands; and

- (g) the City, in its opinion, is satisfied that the Rehabilitation Work is being carried out diligently.

2.3 All letters of credit required under this Article will be issued by a Schedule I Canadian chartered bank or other financial institution acceptable to the City's Director of Legal Services 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 Owner has, to the City's full satisfaction, completed all of its obligations under this agreement.

2.4 The City may call upon the letter or letters of credit provided to it pursuant to the preceding paragraphs herein and apply the proceeds therefrom for any purpose and in any manner it may choose in connection with the Rehabilitation Work, if:

- (a) the bank issuing the letter of credit refuses to extend or renew the expiry date of the letter of credit;
- (b) the Owner becomes insolvent or commits any act of bankruptcy or becomes bankrupt or takes the benefit of any act or legislation that may be enforced for bankrupt or insolvent debtors;
- (c) the Owner, in the City's opinion, has not been diligently carrying out the Rehabilitation Work; or
- (d) the City in any way undertakes all or any part of the Rehabilitation Work pursuant to this agreement.

2.5 If at anytime, in default under this agreement, the Owner, in the City's opinion, fails to carry out the Rehabilitation Work as required hereby and fails to rectify any such default within 30 days, or within such other longer time as the City may explicitly permit, after notice from the City to so rectify such default, the City, on the Owner's behalf and at the Owner's expense, may, but will be under not be obligated to, rectify the Owner's default.

ARTICLE 3 STATUTORY RIGHT OF WAY

3.1 Pursuant to Section 218 of the *Land Title Act*, the Owner hereby grants to the City, effective at all times from and after the date upon which the City issues the Development Permit, a statutory right of way to enter, be and move about on the Lands:

- (a) to install, maintain, repair and replace on the exterior of the Heritage Building, at the City's expense, and in consultation with the Owner as to location, a commemorative plaque; and
- (b) in the event the Owner, in the City's opinion, is in default of any of its obligations under this agreement, to carry out any such obligations of the Owner hereunder as the City may choose.

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

3.3 Notwithstanding any other provision of this agreement, nothing herein obligates the City to exercise any of the rights granted to it by way of the statutory right of way contained herein.

ARTICLE 4 DEBTS OWED TO CITY

4.1 If the City, pursuant to this agreement, enters upon the Lands or any of them to perform any of the Owner's obligations hereunder to carry out the Rehabilitation Work or to conserve, repair or replace or replicate 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 Owner will pay to the City, forthwith on demand, to the extent the City has not taken payment for such costs from any letters of credit provided to the City hereunder, as reimbursement for expenses incurred, the full amount of all costs the City incurs to carry out work to rehabilitate, conserve, repair or replace the Heritage Building, plus 20% of such costs as fair compensation for the City's overhead, and any such amounts the Owner does not pay or fails to pay to the City forthwith on demand will bear interest, until paid in full, at the prime lending rate at the Bank of Montreal's main branch in the City of Vancouver, plus 3%, calculated monthly and not in advance.

ARTICLE 5 EQUITABLE CHARGE

5.1 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.

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

ARTICLE 6 BY-LAW VARIATIONS

6.1 The RT-3 District Schedule to the *Zoning & Development By-law* is hereby varied as follows for the Lands, for purposes of the Development:

- (a) Section 4.1.1 of the RT-3 District Schedule is varied so that the parcel area minimum prescribed there for Infill Dwelling development does not apply;
- (b) Section 4.5 of the RT-3 District Schedule is varied so that the Director of Planning may permit:
 - (i) an east side yard with a minimum width of 0.49 feet; and
 - (ii) a west side yard with a minimum width of 2.98 feet; and

- (c) Section 4.17 is varied so that it does not apply.

ARTICLE 7 NOTICES

7.1 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, to the Owner's address as shown in the Land Title Office records; and
- (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 the Lands or any part thereof should change, then to the address as set out in the State of Title Certificate for the Lands or such part thereof, 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 8 GENERAL

8.1 Joint and Several Liability. If the Owner is more than one party, such parties shall be jointly and severally liable to the City for the performance and observance of the Owner's obligations in this agreement.

8.2 Priority of Registration. The Owner, at his, her or its 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.

8.3 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.

8.4 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.

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

8.6 Enurement. This agreement shall enure to the benefit of and be binding upon the Owner and its 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 Owner's successors in title and trustees and successors and all parties claiming through such owners.

8.7 City's Other Rights and Obligations. Nothing contained or implied in this agreement will derogate from the obligations of the Owner 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* 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 Owner and the City.

8.8 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.

8.9 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.

8.10 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.

8.11 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.

8.12 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 Charge" means the mortgage registered under number CA979829;
- (b) "Existing Chargeholder" means Coast Capital Savings Credit Union;
- (c) "New Charges" mean the Section 219 Covenant, the Statutory Right of Way and the Equitable Charge 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) consent 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 Charge in the same manner and to the same effect as if the Owners have granted the New Charges, and it had been registered against title to the Lands, prior to the grant or registration of the Existing Charge or the advance of any money under the Existing Charge.

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

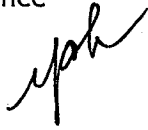
END OF DOCUMENT

EXPLANATION**Heritage Designation By-law
Re: 833 Keefer Street**

At a public hearing on December 11, 2012, Council approved a recommendation to designate the structure and exterior envelope, of the improvements and exterior building materials of a building at 833 Keefer Street as protected heritage property. Enactment of the attached By-law will achieve the designation.

Director of Legal Services
January 15, 2013

833 Keefer Street
The Christenson Residence



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 of the
heritage building

833 Keefer Street
Vancouver, B.C.

PID: 015-575-276
W 24 Feet of LOT 34
BLOCK 77
DISTRICT LOT 181
PLAN VAP 196

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 _____, 2013

Mayor

City Clerk

EXPLANATION

**Heritage Revitalization Agreement
Regarding 837 Keefer Street**

After a public hearing on December 11, 2012, Council resolved to enter into a Heritage Revitalization Agreement regarding 837 Keefer Street, pursuant to Section 592 of the *Vancouver Charter*. Enactment of the attached By-law will achieve this.

Director of Legal Services
January 15, 2013

837 Keefer 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 837 Keefer Street, and the following legal description:

PID: 008-226-717
LOT 33
BLOCK 77
DISTRICT LOT 181
PLAN 196

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 , 2013

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 15 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)

008-226-717

Lot 33 Block 77 District Lot 181 Plan 196

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)/CHARGEHOLDER(S):*

**ELIZABETH JANE EVANS, Mental Health Worker/Hotel Manager
ROYAL BANK OF CANADA, 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	
_____				ELIZABETH JANE EVANS
(Solicitor/Notary)				
_____				ROYAL BANK OF CANADA, by its authorized signatory(ies):
(Solicitor/Notary) (as to all signatures)				Print Name: _____
				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/> Bruce T. Quayle Solicitor 453 West 12 th Avenue Vancouver, BC, V5Y 1V4 Tel: 604-871-6545				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.

3. NATURE OF INTEREST:*

DESCRIPTION	DOCUMENT REFERENCE (page and paragraph)	PERSON ENTITLED TO INTEREST
Section 219 Covenant	Article 2, pages 7-10	Transferee
Priority Agreement granting above Section 219 Covenant priority over Mortgage BB917277	Page 15	Transferee
Statutory Right of Way	Article 5, page 11	Transferee
Priority Agreement granting above Statutory Right of Way priority over Mortgage BB917277	Page 15	Transferee
Equitable Charge	Article 6, page 11 - 12	Transferee
Priority Agreement granting above Equitable Charge priority over Mortgage BB917277	Page 15	Transferee

TERMS OF INSTRUMENT - PART 2
Heritage Revitalization Agreement

WHEREAS:

- A. The Owner (as defined below herein) is the registered owner of the parcel of land at 837 Keefer Street in City of Vancouver (the “Lands”) which has the legal description shown in the Form C - Part 1 part of this document.
- B. There is a building situated on the Lands, known as the McLellan Residence, which is considered to be of heritage value (the “Heritage Building”).
- C. The Owner wishes to develop the Lands by:
- (i) rehabilitating the Heritage Building; and
 - (ii) constructing a new Infill Dwelling thereon,
- and under development permit application no. DE415780 (the “DP Application”) has applied to the City for a development permit for that purpose.
- D. The Owner proposes that, in exchange for a number of City by-law variations needed for the proposed project as contemplated under the DP Application, the Owner will enter into a heritage revitalization agreement in respect of the Heritage Building, for the rehabilitation and conservation thereof and accept the adding of the Heritage Building to the City’s Heritage Register and the designation of it as a protected heritage property under the provisions of the *Vancouver Charter* SBC 1953 c.55.

THEREFORE, pursuant to Section 592 of the *Vancouver Charter* SBC 1953 c.55, and in consideration of the payment \$10 by the City to the Owner, the mutual obligations and benefits given herein and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties agree as follows:

ARTICLE 1
DEFINITIONS

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) “City” means the municipality of the City of Vancouver continued under the *Vancouver Charter* and “City of Vancouver” means its geographic location and area;
- (b) “Conservation Plan” means a written plan and guidelines prepared by and/or under the supervision of a Heritage Consultant and explicitly accepted by the City for the rehabilitation and conservation of the Heritage Building as provided for hereunder;
- (c) “Development” means the proposed development project as described above in the introductory paragraphs hereto to rehabilitate the Heritage Building and construct an Infill Dwelling on the Lands pursuant to the DP Application;

- (d) **“Development Permit”** means any development permit(s) issued by the City under the DP Application in respect of the Development, as such permit(s) may be modified or amended from time to time, including, without limitation, all final reports, plans, drawings and specifications relating thereto;
- (e) **“Director of Planning”** means the chief administrator from time to time of the City’s Planning Department and his or her successors in function and their respective nominees;
- (f) **“DP Application”** has the meaning given above in the introductory paragraphs hereto;
- (g) **“Heritage Building”** has the meaning given above in the introductory paragraphs herein;
- (h) **“Heritage Consultant”** means an independent, heritage building rehabilitation and conservation expert, knowledgeable and experienced in and duly qualified for planning and supervising rehabilitation and conservation work for heritage buildings;
- (i) **“Heritage Designation”** means the City’s designation of the Heritage Building as a protected heritage property pursuant to section 593 of the *Vancouver Charter*;
- (j) **“Infill Dwelling”** has the meaning given under the *Zoning & Development By-law*;
- (k) **“Lands”** has the meaning given above in the introductory paragraphs hereto and includes any other parcels of land into which the Lands may at any time in any way be consolidated or subdivided;
- (l) **“Land Title Act”** means the *Land Title Act*, R.S.B.C. 1996, c.250;
- (m) **“New Building”** means any and all new buildings and other structures constructed on the Lands after this agreement is first registered on title to the Lands;
- (n) **“Owner”** means the registered owner or owners of the Lands;
- (o) **“rehabilitate”** and **“rehabilitation”** mean the planning and carrying out of restoration, rehabilitation, construction and conservation work to restore, upgrade, improve and conserve the structure, support and heritage characteristics and features of a heritage building or real property heritage feature so as to revitalize it and extend its life and use as such;
- (p) **“Rehabilitation Work”** has the meaning given below herein;
- (q) **“Vancouver Charter”** means the *Vancouver Charter*, S.B.C. 1953, c.55, 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;

- (r) **“Zoning & Development By-law”** means the City’s *Zoning & Development By-law No. 3575* and any amendments thereto and replacements thereof.

ARTICLE 2
SECTION 219 COVENANT
Rehabilitation & Conservation of Heritage Building

2.1 Pursuant to Section 219 of the *Land Title Act*, the Owner covenants and agrees, as a covenant and agreement running with, charging and binding the Lands, that:

- (a) the Owner, at the Owner’s expense, and to the satisfaction of the Director of Planning:
- (i) within 24 months after the date upon which the Development Permit is issued, plus any additional time by which the date of expiry of the Development Permit may be extended under the provisions of the *Zoning and Development By-law*, but in any event by no later than 30 months after the date upon which this covenant is registered on title to the Lands, shall rehabilitate or cause the rehabilitation of the Heritage Building and shall do so in accordance with this agreement, the Development Permit and the Conservation Plan (the **“Rehabilitation Work”**);
 - (ii) shall ensure that a Heritage Consultant supervises the Rehabilitation Work;
 - (iii) shall ensure that, at all times during the carrying out of the Rehabilitation Work, the Heritage Building is secure from vandalism and occupation by squatters;
 - (iv) at all times after and while this agreement is registered on title to the Lands, shall keep the Heritage Building insured to its full replacement value against all perils, including, without limitation, damage or destruction by earthquake; and
 - (v) on completion of the Rehabilitation Work as required by this agreement, shall cause a Heritage Consultant to submit to the Director of Planning, a signed statement stating explicitly that the Rehabilitation Work has been completed in accordance with the Conservation Plan;
- (b) nobody will in any way use or occupy the New Building or any part thereof and nobody will apply for or take any other action to compel the City, and, notwithstanding that the New Building may be ready for occupancy, the City will be under no obligation to issue any occupancy permit for the New Building or any part of it at any time after this agreement is registered on title to the Lands, until:
- (i) the Rehabilitation Work has been completed in accordance herewith;
 - (ii) the Owner, as required above herein, has submitted or caused to be submitted to the Director of Planning a signed written statement prepared by a Heritage Consultant stating explicitly that the

Rehabilitation Work has been completed in accordance with the Conservation Plan; and

- (iii) the City has given the Owner a written notice or confirmation by which the City explicitly accepts or confirms its acceptance that the Rehabilitation Work has been completed in accordance herewith;
- (c) the City may revoke at anytime any occupancy permit(s) issued for the New Building prior to completion of the Rehabilitation Work, unless such occupancy permit(s) was obtained in accordance with this agreement, and in such circumstances the Owner, on reasonable notice from the City, will ensure that anyone occupying any part of any such building vacates it immediately on such revocation of occupancy permit(s), and if anyone continues to occupy any portion of any part of the New Building in contravention of such revocation, this agreement and any applicable City bylaws, the City, at the Owner's expense, may pursue all remedies available to it, including, without limitation, injunctive relief, to ensure that the New Building is vacated and unoccupied in accordance with this agreement;
- (d) after completion of the Rehabilitation Work in accordance herewith, the Owner, at the Owner's expense, will do all things reasonably necessary to conserve the Heritage Building as rehabilitated and, in any event, keep it in good condition in all respects at all times;
- (e) except for maintenance and repair work, the Owner will not and will not suffer or permit anyone else to do anything at anytime to renovate, alter, modify or reconfigure or that will result in any alteration, modification or reconfiguration of the Heritage Building in any way except as may be permitted or required by this agreement, the Conservation Plan and/or any development and/or heritage alteration permits issued by the City;
- (f) the Owner shall not at any time and shall not suffer or permit anyone else to at anytime do anything that will obscure, deface or remove in any way any heritage related commemorative plaque the City, at its expense, may attach to the Heritage Building pursuant to the statutory right of way granted to it herein;
- (g) if at any time for any reason the Heritage Building is damaged in any way or destroyed, the Owner, at the Owner's expense, and to the City's satisfaction, shall repair it or replace it with a replica building, except that if the Owner *bona fide* believes that to do so would be uneconomical, in which case, and if for that reason the Owner wishes to demolish it as damaged or wishes not to replicate it, as the case may be, the Owner, at the Owner's expense, and in consultation with and to the satisfaction of the City, will prepare an economic analysis therefor, but taking into consideration only land related economic factors, such as, for example, but without limitation, the estimated cost to repair or replicate the Heritage Building, as the case may be, the anticipated market value of the repaired or replicated building, the incentives given by the City for this agreement and the Heritage Designation, the estimated value of the Lands under the zoning otherwise applicable thereto, after which the City and the Owner, together, on the basis of that analysis, will determine whether in the circumstances it would be uneconomical to repair or replicate the

Heritage Building, failing which the matter in all respects will be determined by arbitration in accordance with the provisions of the *Commercial Arbitration Act* RSBC 1996 c. 55, and if the Owner and the City agree or if in arbitration it is determined that it would be uneconomical for the Owner to be required to repair or replicate the Heritage Building, then, by explicit written notification, the City will consent to the Owner's wish to not repair or replicate the Heritage Building and will discharge this agreement from title to the Lands and the Owner may request of the City's Mayor and Council that the Heritage Designation be cancelled; and

- (h) the 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 and therefore may affect the value of the Lands, the Owner has received full and fair compensation therefor and the 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 and agrees that the requirements of Section 595(1) of the *Vancouver Charter* SBC 1953 c.55 have been fully satisfied, and the Owner 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 Owner may suffer, incur or experience and the Owner 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 this agreement and/or the Heritage Designation. The release and promise of indemnification contained in this paragraph will survive discharge and termination of this agreement.

2.2 Notwithstanding the occupancy restrictions set out above in respect of the New Building, the City, in its discretion, may issue occupancy permits therefor and on that basis it may be occupied prior to the time that the Rehabilitation Work is completed in accordance herewith, provided:

- (a) the Owner duly applies to the City for any and all occupancy permits required therefor and pays all fees required therefor;
- (b) this agreement has been fully registered in the Land Title Office to the City's satisfaction;
- (c) the City has issued a building permit and/or heritage alteration permit in respect of the Rehabilitation Work;
- (d) all legal requirements for occupancy of the New Building have been fulfilled;
- (e) the Owner has delivered to the City, in all respects to the City's satisfaction, a letter of credit in the amount equal to one hundred and twenty percent (120%) of the then estimated cost to complete the Rehabilitation Work, with such estimate to be made in writing by the Consultant and explicitly accepted in writing by the City;
- (f) the Owner, at the time of application for any such occupancy permits, is not, in the City's opinion, in breach of any of its obligations under this agreement or

any other agreement between the City and the Owner with respect to the Heritage Building and/or the Lands; and

- (g) the City, in its opinion, is satisfied that the Rehabilitation Work is being carried out diligently.

2.3 All letters of credit required under this Article will be issued by a Schedule I Canadian chartered bank or other financial institution acceptable to the City's Director of Legal Services 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 Owner has, to the City's full satisfaction, completed all of its obligations under this agreement.

2.4 The City may call upon the letter or letters of credit provided to it pursuant to the preceding paragraphs herein and apply the proceeds therefrom for any purpose and in any manner it may choose in connection with the Rehabilitation Work, if:

- (a) the bank issuing the letter of credit refuses to extend or renew the expiry date of the letter of credit;
- (b) the Owner becomes insolvent or commits any act of bankruptcy or becomes bankrupt or takes the benefit of any act or legislation that may be enforced for bankrupt or insolvent debtors;
- (c) the Owner, in the City's opinion, has not been diligently carrying out the Rehabilitation Work; or
- (d) the City in any way undertakes all or any part of the Rehabilitation Work pursuant to this agreement.

2.5 If at anytime, in default under this agreement, the Owner, in the City's opinion, fails to carry out the Rehabilitation Work as required hereby and fails to rectify any such default within 30 days, or within such other longer time as the City may explicitly permit, after notice from the City to so rectify such default, the City, on the Owner's behalf and at the Owner's expense, may, but will be under not be obligated to, rectify the Owner's default.

ARTICLE 3

STATUTORY RIGHT OF WAY

3.1 Pursuant to Section 218 of the *Land Title Act*, the Owner hereby grants to the City, effective at all times from and after the date upon which the City issues the Development Permit, a statutory right of way to enter, be and move about on the Lands:

- (a) to install, maintain, repair and replace on the exterior of the Heritage Building, at the City's expense, and in consultation with the Owner as to location, a commemorative plaque; and
- (b) in the event the Owner, in the City's opinion, is in default of any of its obligations under this agreement, to carry out any such obligations of the Owner hereunder as the City may choose.

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

3.3 Notwithstanding any other provision of this agreement, nothing herein obligates the City to exercise any of the rights granted to it by way of the statutory right of way contained herein.

ARTICLE 4 DEBTS OWED TO CITY

4.1 If the City, pursuant to this agreement, enters upon the Lands or any of them to perform any of the Owner's obligations hereunder to carry out the Rehabilitation Work or to conserve, repair or replace or replicate 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 Owner will pay to the City, forthwith on demand, to the extent the City has not taken payment for such costs from any letters of credit provided to the City hereunder, as reimbursement for expenses incurred, the full amount of all costs the City incurs to carry out work to rehabilitate, conserve, repair or replace the Heritage Building, plus 20% of such costs as fair compensation for the City's overhead, and any such amounts the Owner does not pay or fails to pay to the City forthwith on demand will bear interest, until paid in full, at the prime lending rate at the Bank of Montreal's main branch in the City of Vancouver, plus 3%, calculated monthly and not in advance.

ARTICLE 5 EQUITABLE CHARGE

5.1 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.

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

ARTICLE 6 BY-LAW VARIATIONS

6.1 Section 10.7.1(a) of the *Zoning and Development Bylaw* is hereby varied for the Lands so that for the Development the Director of Planning may allow steps in any side yard thereon.

6.2 Section 10.7.1(b) of the *Zoning and Development Bylaw* is hereby varied for the Lands so that for the Development the Director of Planning may allow eaves, gutters, sills, chimneys and other similar projections to project into any required or permitted yard thereon.

6.3 The RT-3 District Schedule to the *Zoning & Development By-law* is hereby varied as follows for the Lands, for purposes of the Development:

- (a) Section 4.1.1 of the RT-3 District Schedule is varied so that the parcel area minimum prescribed there for Infill Dwelling development does not apply;
- (b) Section 4.5 of the RT-3 District Schedule is varied so that the Director of Planning may permit:
 - (i) an east side yard with a minimum width of 1.21 feet; and
 - (ii) a west side yard with a minimum width of 0.75 feet;
- (c) Section 4.7.1 of the RT-3 District Schedule is varied to allow a total maximum floor area of 3,047 sq. ft. (approximately 1.00 FSR); and
- (d) Sections 4.8.1 and 4.8.2 are varied to permit 51% maximum site coverage.

ARTICLE 7 NOTICES

7.1 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, to the Owner's address as shown in the Land Title Office records; and
- (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 the Lands or any part thereof should change, then to the address as set out in the State of Title Certificate for the Lands or such part thereof, 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 8 GENERAL

8.1 Joint and Several Liability. If the Owner is more than one party, such parties shall be jointly and severally liable to the City for the performance and observance of the Owner's obligations in this agreement.

8.2 Priority of Registration. The Owner, at his, her or its 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.

8.3 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.

8.4 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.

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

8.6 Enurement. This agreement shall enure to the benefit of and be binding upon the Owner and its 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 Owner's successors in title and trustees and successors and all parties claiming through such owners.

8.7 City's Other Rights and Obligations. Nothing contained or implied in this agreement will derogate from the obligations of the Owner 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* 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 Owner and the City.

8.8 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.

8.9 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.

8.10 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.

8.11 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.

8.12 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 Charge" means the mortgage registered under number BB917277;
- (b) "Existing Chargeholder" means Royal Bank of Canada;
- (c) "New Charges" mean the Section 219 Covenant, the Statutory Right of Way and the Equitable Charge 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) consent 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 Charge in the same manner and to the same effect as if the Owners have granted the New Charges, and it had been registered against title to the Lands, prior to the grant or registration of the Existing Charge or the advance of any money under the Existing Charge.

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

EXPLANATION**Heritage Designation By-law
Re: 837 Keefer Street**

At a public hearing on December 11, 2012, Council approved a recommendation to designate the structure and exterior envelope, of the improvements and exterior building materials of a building at 837 Keefer Street as protected heritage property. Enactment of the attached By-law will achieve the designation.

Director of Legal Services
January 15, 2013

837 Keefer 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 of the
heritage building

837 Keefer Street
Vancouver, B.C.

PID: 008-226-717
LOT 33
BLOCK 77
DISTRICT LOT 181
PLAN 196

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 _____, 2013

Mayor


City Clerk

EXPLANATION**Authorization to enter into a
Heritage Revitalization Agreement
Regarding 1906 West 11th Avenue**

After a public hearing on December 11, 2012, Council resolved to enter into a Heritage Revitalization Agreement regarding 1906 West 11th Avenue, pursuant to Section 592 of the *Vancouver Charter*. Enactment of the attached By-law will achieve this.

Director of Legal Services
January 15, 2013

1906 West 11th Avenue
The Beard House



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 1906 West 11th Avenue, and the following legal description:

PID: 014-183-994
LOT 10
BLOCK 386
DISTRICT LOT 526
Plan 1949

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 , 2013

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 15 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)

014-183-994

Lot 10 Block 386 District Lot 526 Plan 1949

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)/CHARGEHOLDER(S):*

ALI FOROUGHIZADEH, Businessman
ROYAL BANK OF CANADA, 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	
_____				ALI FOROUGHIZADEH
(Solicitor/Notary)				_____
				ROYAL BANK OF CANADA, by its authorized signatories:

				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/> Bruce T. Quayle Solicitor 453 West 12 th Avenue Vancouver, BC, V5Y 1V4 Tel: 604-871-6545				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.

3. NATURE OF INTEREST:*

DESCRIPTION	DOCUMENT REFERENCE (page and paragraph)	PERSON ENTITLED TO INTEREST
Section 219 Covenant	Article 2, pages 7-11	Transferee
Priority Agreement granting above Section 219 Covenant priority over Mortgage CA2355287	Page 15	Transferee
Statutory Right of Way	Article 3, page 11	Transferee
Priority Agreement granting above Statutory Right of Way priority over Mortgage CA2355287	Page 15	Transferee
Equitable Charge	Article 5, page 12	Transferee
Priority Agreement granting above Equitable Charge priority over Mortgage CA2355287	Page 15	Transferee

TERMS OF INSTRUMENT - PART 2
Heritage Revitalization Agreement

WHEREAS:

- A. The Owner (as defined below herein) is the registered owner of the lands and premises at 1906 West 11th Avenue in City of Vancouver, which have the legal description shown in the Form C - Part 1 part of this document (the "Lands").
- B. There is a residential building, known as 'The Beard House', situated on the Lands which is considered to be of heritage value (the "Heritage Building").
- C. The Owner proposes to develop the Lands by:
- (i) rehabilitating the Heritage Building; and
 - (ii) constructing a new Infill One-Family Dwelling (as defined under the *Zoning & Development By-law*) at the rear of the Lands (the "New Building");
- and, under application no. DE415688, has applied to the City for a development permit for that purpose (the "DP Application").
- D. The Owner proposes that, in exchange for a certain City by-law variations needed to permit the proposed project as contemplated under the DP Application, the Owner will accept the addition of the Heritage Building to the City's Heritage Register established under the provisions of the *Vancouver Charter* and the designation of the Heritage Building as a protected heritage property under the provisions of the *Vancouver Charter* and will enter into with the City a heritage revitalization agreement in respect of the Heritage Building under the provisions of the *Vancouver Charter*.

THEREFORE, pursuant to Section 592 of the *Vancouver Charter*, and in consideration of the payment \$10 by the City to the Owner, the mutual obligations and benefits given herein and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties agree as follows:

ARTICLE 1
DEFINITIONS

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) "City" means the municipality of the City of Vancouver continued under the *Vancouver Charter* and "City of Vancouver" means its geographic location and area;
- (b) "Conservation Plan" means a written plan and guidelines prepared by and/or under the supervision of a Heritage Consultant and explicitly accepted by the City for the rehabilitation of the Heritage Building as provided for hereunder;
- (c) "Development" means the proposed development project as described above in the introductory paragraphs hereto to restore and rehabilitate the Heritage

Building and construct a new Infill One-Family Dwelling on the Lands pursuant to the DP Application;

- (d) **“Development Permit”** means any development permit(s) issued by the City under the DP Application and in respect of the Development, as such permit(s) may be modified or amended from time to time, including, without limitation, all final reports, plans, drawings and specifications relating thereto;
- (e) **“Director of Planning”** means the City’s Director of Planning and his or her successors in function and their respective nominees;
- (f) **“DP Application”** has the meaning given above in the introductory paragraphs hereto;
- (g) **“Heritage Building”** has the meaning given above in the introductory paragraphs hereto;
- (h) **“Heritage Consultant”** means an independent, heritage building rehabilitation and conservation expert, knowledgeable and experienced in and duly qualified for planning and supervising rehabilitation and conservation work for heritage buildings;
- (i) **“Heritage Designation”** means the City’s designation of the Heritage Building as a protected heritage property pursuant to section 593 of the *Vancouver Charter*;
- (j) **“Infill One-Family Dwelling”** has the meaning given in the *Zoning & Development By-law*;
- (k) **“Lands”** has the meaning given above in the introductory paragraphs hereto and includes any other parcels of land into which the Lands may at any time in any way be consolidated or subdivided;
- (l) **“Land Title Act”** means the *Land Title Act*, R.S.B.C. 1996, c.250;
- (m) **“New Building”** means the new Infill Two-Family Dwelling proposed for construction on the Lands under the DP Application;
- (n) **“Owner”** means the registered owner(s) of the Lands;
- (o) **“rehabilitate”** and **“rehabilitation”** mean the planning and carrying out of restoration, rehabilitation, construction and conservation work to restore, upgrade, improve and conserve the structure, support and heritage characteristics and features of a heritage building or real property heritage feature so as to revitalize it and extend its life and use as such;
- (p) **“Rehabilitation Work”** has the meaning given below herein;
- (q) **“Vancouver Charter”** means the *Vancouver Charter*, S.B.C. 1953, c.55, 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;

- (r) **“Zoning & Development By-law”** means the City’s *Zoning and Development By-law No. 3575* and any amendments thereto and replacements thereof.

**ARTICLE 2
SECTION 219 COVENANT**

2.1 Pursuant to Section 219 of the *Land Title Act*, the Owner covenants and agrees, as a covenant and agreement running with, charging and binding the Lands, that:

- (a) the Owner, at the Owner’s expense, and to the satisfaction of the Director of Planning:
- (i) within 24 months after the date upon which the Development Permit is issued, plus any additional time by which the date of expiry of the Development Permit may be extended under the provisions of the *Zoning and Development By-law*, but in any event by no later than 30 months after the date upon which this covenant is registered on title to the Lands, shall rehabilitate or cause the rehabilitation of the Heritage Building and shall do so in accordance with this agreement, the Development Permit and the Conservation Plan (the “Rehabilitation Work”);
 - (ii) shall ensure that a Heritage Consultant supervises the Rehabilitation Work;
 - (iii) shall ensure that, at all times during the carrying out of the Rehabilitation Work, the Heritage Building is secure from vandalism and occupation by squatters;
 - (iv) at all times after and while this agreement is registered on title to the Lands, shall keep the Heritage Building insured to its full replacement value against all perils, including, without limitation, damage or destruction by earthquake; and
 - (v) on completion of the Rehabilitation Work as required by this agreement, shall cause a Heritage Consultant to submit to the Director of Planning, a signed statement stating explicitly that the Rehabilitation Work has been completed in accordance with the Conservation Plan;
- (b) nobody will in any way use or occupy the New Building or any part thereof and nobody will apply for or take any other action to compel the City, and, notwithstanding that the New Building may be ready for occupancy, the City will be under no obligation to issue any occupancy permit for the New Building or any part of it at any time after this agreement is registered on title to the Lands, until:
- (i) the Rehabilitation Work has been completed in accordance herewith;
 - (ii) the Owner, as required above herein, has submitted or caused to be submitted to the Director of Planning a signed written statement prepared by a Heritage Consultant stating explicitly that the

Rehabilitation Work has been completed in accordance with the Conservation Plan; and

- (iii) the City has given the Owner a written notice or confirmation by which the City explicitly accepts or confirms its acceptance that the Rehabilitation Work has been completed in accordance herewith;
- (c) the City may revoke at anytime any occupancy permit(s) issued for the New Building prior to completion of the Rehabilitation Work, unless such occupancy permit(s) was obtained in accordance with this agreement, and in such circumstances the Owner, on reasonable notice from the City, will ensure that anyone occupying any part of any such building vacates it immediately on such revocation of occupancy permit(s), and if anyone continues to occupy any portion of any part of the New Building in contravention of such revocation, this agreement and any applicable City bylaws, the City, at the Owner's expense, may pursue all remedies available to it, including, without limitation, injunctive relief, to ensure that the New Building is vacated and unoccupied in accordance with this agreement;
- (d) after completion of the Rehabilitation Work in accordance herewith, the Owner, at the Owner's expense, will do all things reasonably necessary to conserve the Heritage Building as rehabilitated and, in any event, keep it in good condition in all respects at all times;
- (e) except for maintenance and repair work, the Owner will not and will not suffer or permit anyone else to do anything at anytime to renovate, alter, modify or reconfigure or that will result in any alteration, modification or reconfiguration of the Heritage Building in any way except as may be permitted or required by this agreement, the Conservation Plan and/or any development and/or heritage alteration permits issued by the City;
- (f) the Owner shall not at any time and shall not suffer or permit anyone else to at anytime do anything that will obscure, deface or remove in any way any heritage related commemorative plaque the City, at its expense, may attach to the Heritage Building pursuant to the statutory right of way granted to it herein;
- (g) if at any time for any reason the Heritage Building is damaged in any way or destroyed, the Owner, at the Owner's expense, and to the City's satisfaction, shall repair it or replace it with a replica building, except that if the Owner *bona fide* believes that to do so would be uneconomical, in which case, and if for that reason the Owner wishes to demolish it as damaged or wishes not to replicate it, as the case may be, the Owner, at the Owner's expense, and in consultation with and to the satisfaction of the City, will prepare an economic analysis therefor, but taking into consideration only land related economic factors, such as, for example, but without limitation, the estimated cost to repair or replicate the Heritage Building, as the case may be, the anticipated market value of the repaired or replicated building, the incentives given by the City for this agreement and the Heritage Designation, the estimated value of the Lands under the zoning otherwise applicable thereto, after which the City and the Owner, together, on the basis of that analysis, will determine whether in the circumstances it would be uneconomical to repair or replicate the

Heritage Building, failing which the matter in all respects will be determined by arbitration in accordance with the provisions of the *Commercial Arbitration Act* RSBC 1996 c. 55, and if the Owner and the City agree or if in arbitration it is determined that it would be uneconomical for the Owner to be required to repair or replicate the Heritage Building, then, by explicit written notification, the City will consent to the Owner's wish to not repair or replicate the Heritage Building and will discharge this agreement from title to the Lands and the Owner may request of the City's Mayor and Council that the Heritage Designation be cancelled; and

- (h) the Owner acknowledges and agrees that, notwithstanding that this agreement, the Heritage Designation and the addition of the Heritage Building to the City's Heritage Register will result in restrictions with respect to the future use and development and therefore may affect the value of the Lands, the Owner has received full and fair compensation therefor and the Owner hereby waives and renounces any and all claims for any further or other compensation by reason of this agreement, the Heritage Designation and/or the addition of the Heritage Building to the City's Heritage Register and acknowledges and agrees that the requirements of Section 595(1) of the *Vancouver Charter* SBC 1953 c.55 have been fully satisfied, and the Owner 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 Owner may suffer, incur or experience and the Owner 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 this agreement, the Heritage Designation and/or the Heritage Building to the City's Heritage Register. The release and promise of indemnification contained in this paragraph will survive discharge and termination of this agreement.

2.2 Notwithstanding the occupancy restrictions set out above in respect of the New Building, the City, in its discretion, may issue occupancy permits therefor and on that basis it may be occupied prior to the time that the Rehabilitation Work is completed in accordance herewith, provided:

- (a) the Owner duly applies to the City for any and all occupancy permits required therefor and pays all fees required therefor;
- (b) this agreement has been fully registered in the Land Title Office to the City's satisfaction;
- (c) the City has issued a building permit and/or heritage alteration permit in respect of the Rehabilitation Work;
- (d) all legal requirements for occupancy of the New Building have been fulfilled;
- (e) the Owner has delivered to the City, in all respects to the City's satisfaction, a letter of credit in the amount equal to one hundred and twenty percent (120%) of the then estimated cost to complete the Rehabilitation Work, with such estimate to be made in writing by the Consultant and explicitly accepted in writing by the City;

- (f) the Owner, at the time of application for any such occupancy permits, is not, in the City's opinion, in breach of any of its obligations under this agreement or any other agreement between the City and the Owner with respect to the Heritage Building and/or the Lands; and
- (g) the City, in its opinion, is satisfied that the Rehabilitation Work is being carried out diligently.

2.3 All letters of credit required under this Article will be issued by a Schedule I Canadian chartered bank or other financial institution acceptable to the City's Director of Legal Services 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 Owner has, to the City's full satisfaction, completed all of its obligations under this agreement.

2.4 The City may call upon the letter or letters of credit provided to it pursuant to the preceding paragraphs herein and apply the proceeds therefrom for any purpose and in any manner it may choose in connection with the Rehabilitation Work, if:

- (a) the bank issuing the letter of credit refuses to extend or renew the expiry date of the letter of credit;
- (b) the Owner becomes insolvent or commits any act of bankruptcy or becomes bankrupt or takes the benefit of any act or legislation that may be enforced for bankrupt or insolvent debtors;
- (c) the Owner, in the City's opinion, has not been diligently carrying out the Rehabilitation Work; or
- (d) the City in any way undertakes all or any part of the Rehabilitation Work pursuant to this agreement.

2.5 If at anytime, in default under this agreement, the Owner, in the City's opinion, fails to carry out the Rehabilitation Work as required hereby and fails to rectify any such default within 30 days, or within such other longer time as the City may explicitly permit, after notice from the City to so rectify such default, the City, on the Owner's behalf and at the Owner's expense, may, but will be under not be obligated to, rectify the Owner's default.

ARTICLE 3 STATUTORY RIGHT OF WAY

3.1 Pursuant to Section 218 of the *Land Title Act*, the Owner hereby grants to the City, effective at all times from and after the date upon which the City issues the Development Permit, a statutory right of way to enter, be and move about on the Lands:

- (a) to install, maintain, repair and replace on the exterior of the Heritage Building, at the City's expense, and in consultation with the Owner as to location, one commemorative plaque regarding the Heritage Building; and

- (b) if at anytime the Owner, in the City's opinion, is in default of any of its obligations under this agreement, to carry out on the Owner's behalf any such obligations of the Owner hereunder as the City may choose.

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

3.3 Notwithstanding any other provision of this agreement, nothing herein obligates the City to exercise any of the rights granted to it by way of the statutory right of way contained herein.

ARTICLE 4 DEBTS OWED TO CITY

4.1 If the City, pursuant to this agreement, enters upon the Lands or any of them to perform any of the Owner's obligations hereunder to carry out the Rehabilitation Work or to conserve, repair 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 Owner shall pay to the City, forthwith on demand, to the extent the City has not taken payment for such costs from any letters of credit provided to the City hereunder, as reimbursement for expenses incurred, the full amount of all costs the City incurs to carry out work to rehabilitate, conserve, repair or replace the Heritage Building, plus 20% of such costs as fair compensation for the City's overhead, and any such amounts the Owner does not pay or fails to pay to the City forthwith on demand will bear interest, until paid in full, at the prime lending rate of the Bank of Montreal's Main Branch in the City of Vancouver, plus 2%, calculated monthly and not in advance.

ARTICLE 5 EQUITABLE CHARGE

5.1 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.

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

ARTICLE 6 BY-LAW VARIATIONS

6.1 Section 10.7.1(a) of the *Zoning and Development Bylaw* is hereby varied in respect of the Lands so that for the Development the Director of Planning may allow steps in any side yard thereon.

6.2 Section 10.7.1(b) of the *Zoning and Development Bylaw* is hereby varied in respect of the Lands so that for the Development the Director of Planning may permit eaves, gutters,

sills, chimneys and other similar features attached to the Heritage Building and/or the New Building may project into a yard.

6.3 Section 4.7.1 of the RT-8 District Schedule to the *Zoning and Development By-Law* is hereby varied in respect of the Lands to permit for the Development a maximum floor space ratio of 0.86 (approximately 5,375 sq. ft.).

6.4 Section 4.7.3 of the RT-8 District Schedule to the *Zoning and Development By-law* is hereby varied in respect of the Lands so that for the Development the Director of Planning may exclude from the computation of floor space ratio, the floor area beneath the front porch of the Heritage Building.

ARTICLE 7 NOTICES

7.1 Any notice, delivery, 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 personally or by courier as follows:

- (a) if to the Owner, to its address as shown on title to the Lands in the Land Title Office records; and
- (b) if to the City:
City of Vancouver
453 West 12th Avenue
Vancouver, British Columbia
V5Y 1V4

Attention: City Clerk and Director of Planning,

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 the Lands or any part thereof should change, then to the address as set out in the State of Title Certificate for the Lands.

ARTICLE 8 GENERAL

8.1 Joint and Several Liability. If the Owner is 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 Priority of Registration. The Owner, at the Owner's 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 encumbrances on title to the Lands as the City may require.

8.3 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.

8.4 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.

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

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

8.7 City's Other Rights and Obligations. Nothing contained or implied in this agreement will derogate from the obligations of the Owner 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* 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 Owner and the City.

8.8 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.

8.9 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.

8.10 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.

8.11 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.

8.12 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, will 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 CA2355287;
- (b) "Existing Chargeholder" means Royal Bank of Canada;
- (c) "New Charges" mean the Section 219 Covenant, the Statutory Right of Way and the Equitable Charge 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) consent to the Owners granting the New Charges to the City; and
- (ii) agrees with the City that the New Charges charge the Lands in priority to the Existing Charges in the same manner and to the same effect as if the Owner has 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

EXPLANATION**Heritage Designation By-law
Re: 1906 West 11th Avenue**

At a public hearing on December 11, 2012, Council approved recommendations to designate the structure and exterior envelope of the improvements and exterior building materials of the heritage building at 1906 West 11th Avenue as protected heritage property. Enactment of the attached By-law will achieve the designation.

Director of Legal Services
January 15, 2013

1906 West 11th Avenue
The Beard House

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 of the
heritage building

1906 West 11th Avenue
Vancouver, B.C.

PID: 014-183-994
LOT 10
BLOCK 386
DISTRICT LOT 526
Plan 1949

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 _____, 2013

Mayor

City Clerk

EXPLANATION

**Authorization to enter into a Housing Agreement
Re: 2551 Kingsway**

The Director of Planning approved Development Permit Application DE415404 subject to a number of prior-to conditions, including that the applicant enter into a Housing Agreement for 2551 Kingsway and subject to Council approval of such an agreement, prior to issuance of the Development Permit. The Director of Planning required that Housing Agreement to include arrangements satisfactory to the Managing Director of Social Development and the Director of Legal Services, to secure 12 residential units as rental for 60 years or the life of the building, whichever is greater, to prohibit separate sales and subdivision by strata plan, and to require such units being made available as rental housing pursuant to the Short Term Incentives for Rental Housing (STIR) Program. This Housing Agreement is consistent with those conditions and it has been accepted and signed by the applicant and its mortgagee, and the City now seeks enactment of the same as a by-law as contemplated by section 565.2 of the *Vancouver Charter*. Enactment of the attached By-law will complete the process to implement the Director of Planning's resolution regarding a Housing Agreement.

Director of Legal Services
January 15, 2013

2551 Kingsway



BY-LAW NO. _____

**A By-law to enact a Housing Agreement
for 2551 Kingsway**

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:

PID: 004-232-801

Lot F, Except That Portion Now Kingsway, See
Reference Plan 2407
Block 5
District Lot 52
Plan 2574

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 _____, 2013

Mayor

City Clerk

Schedule A

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 12 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)

004-232-801

Lot F, Except That Portion Now Kingsway, See Reference Plan
2407, Block 5 District Lot 52 Plan 2574

3. NATURE OF INTEREST:*

DESCRIPTION	DOCUMENT REFERENCE (page and paragraph)	PERSON ENTITLED TO INTEREST
Section 219 Covenant	Entire Instrument, Pages 1 - 11	Transferee
Priority Agreement granting the above Section 219 Covenant priority over Mortgage CA1950625 and Assignment of Rents CA1950626	Page 12	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)/CHARGEHOLDER(S):*

VANEAGLE HOLDINGS INC. (Incorporation No. BC0879649)

GREATER VANCOUVER COMMUNITY CREDIT UNION, (Incorporation No. FI-40), as to Priority

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

CITY OF VANCOUVER, 453 West 12th Avenue, Vancouver, British Columbia, 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/> (as to both signatures)	12			VANEAGLE HOLDINGS INC. by its authorized signatory(ies): <hr/> <hr/> <hr/> Signature and Print Name: <hr/> <hr/> Signature and Print Name:
<hr/> Stephen F. Hayward Solicitor 453 West 12 th Avenue Vancouver, BC, V5Y 1V4 Tel: 604-873-7714	12			CITY OF VANCOUVER by its authorized signatory: <hr/> Frances J. Connell/Yvonne Liljefors

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

LAND TITLE ACT
FORM D
EXECUTIONS CONTINUED

Officer Signature(s) Execution Date Party(ies) Signature(s)

(as to both signatures)

Y	M	D
12		

GREATER VANCOUVER COMMUNITY CREDIT UNION by its authorized signatory(ies):

Signature and print name:

Signature and 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

TERMS OF AGREEMENT - PART 2**Stir Housing Agreement and Building Use Covenant
(2551 Kingsway)****WHEREAS:**

- A. The Transferor, Vaneagle Holdings Inc. (as more particularly defined in Section 1.1, the "Owner"), is the registered and beneficial owner of, and intends to develop, the Lands;
- B. The Owner wishes to qualify, pursuant to the City's "Short Term Incentives for Rental" ("STIR") program, for a waiver of the development cost levies that would otherwise be payable by the Owner in respect of the Designated Units;
- C. To accomplish the foregoing objectives, the Owner made development permit application DE415404 to the Transferee, the City, to redevelop the Lands to permit a mixed-use residential/retail development with retail on the first floor, parking and amenity space on the 2nd floor, and 12 units of dedicated For-Profit Affordable Rental Housing on floors 3 to 5, and the City has conditionally approved the said development;
- D. Among the City's conditions precedent to issuance of the Development Permit is the requirement that the Owner shall make arrangements to the satisfaction of the Managing Director of Social Development and the Director of Legal Services, to secure the designated units as rental for 60 years or life of the building, whichever is greater, subject to a no separate-sales covenant and a non-stratification covenant, and subject to such rentals being made available as affordable rental housing units pursuant to the STIR program, all of which will be done at the sole cost and expense of the Owner;
- E. In order to qualify for the STIR Program, the Owner must:
- (i) satisfy the City Manager that the Designated Units qualify as For-Profit Affordable Rental Housing;
 - (ii) register against title to the Lands, a legal instrument satisfactory to the Director of Legal Services as to form, substance and priority of registration, restricting the tenure of the Designated Units to rental only for the life of the Rental Building or 60 years, whichever is longer, or such other term as the City and the Owner may agree; and
 - (iii) comply with all other City-imposed conditions applicable; and
- F. The City Manager has concluded that the Designated Units qualify, or will qualify when the building(s) containing them is/are completed, as For-Profit Affordable Rental Housing, and the Owner is entering into this Agreement to satisfy the other pre-conditions to eligibility for a waiver of the subject development cost levies otherwise applicable.

NOW THEREFORE THIS AGREEMENT WITNESSES that for good and valuable consideration (the receipt and sufficiency of which the parties hereby acknowledge and agree to) the Owner and the City, in satisfaction of the requirements of Section 3.1 of the Vancouver DCL By-law and pursuant to Section 219 of the *Land Title Act*, and Section 565.2 of the *Vancouver Charter*, agree as follows, in respect of the use of the Lands and the Buildings:

1. **Definitions.** In this Agreement the following terms have the definitions now given:

- (a) **"Agreement"** means this STIR Housing Agreement and Building Use Covenant, including the foregoing recitals;
- (b) **"Building"** means any building or structure on the Lands (other than temporary buildings or structures on the Lands during the period of, and required for the purposes of, construction) used, occupied or constructed on the Lands, and any other building or structure used, occupied or constructed on the Lands to replace such Building, at any time following the Effective Date, and includes any portion of such building or structure; and **"Buildings"** means all such buildings and structures;
- (c) **"Building Permit"** means any building permit issued by the City authorizing the building of a Building as contemplated by the Development Permit;
- (d) **"City Manager"** means the chief administrator from time to time of the City and her/his successors in function and their respective nominees;
- (e) **"City Personnel"** means any and all of the elected and appointed officials, and officers, employees, agents, nominees, delegates, permittees, contractors, subcontractors and volunteers of the City;
- (f) **"Designated Units"** means not less than 12 For-Profit Affordable Rental Housing Units occupying at least 8,602 sq. ft., together with all related parking and common service and amenity areas and systems, subject to final approval by the City as to form and contents; and **"Designated Unit"** means any one of them;
- (g) **"Development Permit"** means the development permit issued by the City pursuant to development permit application DE415404 authorizing the development on the Lands as contemplated thereby, and includes any amendment or supplement thereto and any replacement thereof;
- (h) **"Director of Legal Services"** means the chief administrator from time to time of the City's Legal Services Department and her/his successors in function and their respective nominees;
- (i) **"Effective Date"** means the date as of which this Agreement has been executed by all parties to it;

- (j) **“For-Profit Affordable Rental Housing”** means three or more new dwelling units in the same building or project, determined by the City Manager under Section 3.1 of the Vancouver DCL By-law to be affordable, but does not include alterations of or extensions to such units, where “determined by the City Manager” means which the City Manager, after considering the finishing, size, location and other design consideration and proposed rents, considers to be affordable; and **“For-Profit Affordable Rental Housing Unit”** means any one of such units;
- (k) **“Land Title Act”** means the *Land Title Act*, R.S.B.C. 1996, c.250, and amendments thereto and re-enactments thereof;
- (l) **“Lands”** means the parcel described in Item 2 in the Form C attached hereto, and includes any parcel into which such land is consolidated or further subdivided;
- (m) **“Losses”** means all damages, losses, costs, actions, causes of action, claims, demands, builders liens, liabilities, expenses, indirect or consequential damages (including loss of profits and loss of use and damages arising out of delays);
- (n) **“Managing Director of Social Development”** means the chief administrator from time to time of the City’s Social Development Department and his/her successors in function and their respective nominees;
- (o) **“Occupancy Permit”** means a permit issued by the City authorizing the use and occupation of any Building, development or partial development on the Lands;
- (p) **“Owner”** means the registered and beneficial owner of the Lands, being Vaneagle Holdings Inc. as of the date of registration of this Agreement in the Land Title Office, and includes any and all of the its respective assigns and successors as registered or beneficial owner of the Lands or any part thereof;
- (q) **“Replacement Designated Unit”** is defined in section 2(b);
- (r) **“Residential Unit”** means a self-contained dwelling unit, comprised of two or more rooms, including toilet, bathing and cooking facilities;
- (s) **“STIR”** is defined in Recital B;
- (t) **“Term”** means the term of this Agreement, which will commence on the Effective Date, and will end on:
 - (i) the 60 year anniversary of the Effective Date; or
 - (ii) the date as of which all Buildings are demolished or substantially destroyed,

whichever occurs later;

- (u) "Vancouver Charter" means the *Vancouver Charter* S.B.C. 1953, c.55, as amended or replaced from time to time; and
- (v) "Vancouver DCL By-law" means the City's Vancouver Development Cost Levy By-law No. 9755 as amended from time to time, as in force and effect as of the date of registration of this Agreement in the Land Title Office.

2. Use of Lands and Buildings. The Owner covenants and agrees with the City that, during the Term:

- (a) the Lands and the Buildings shall not be used in any way that is inconsistent with the terms of this Agreement;
- (b) the Designated Units shall not be used for any purpose other than providing For-Profit Affordable Rental Housing, and if any Building is destroyed or demolished before the 60th anniversary of the Effective Date, then any replacement building(s) built on the Lands (together with any remaining undestroyed or undemolished Building) shall also contain not less than the same number and type of replacement Designated Units as the destroyed or demolished Building(s) formerly contained, which replacement Designated Units shall also be used only for the purpose of providing For-Profit Affordable Rental Housing (each such replacement Designated Unit hereinafter referred to as a "**Replacement Designated Unit**"), in accordance with the terms of this Agreement and the applicable by-laws of the City;
- (c) it will not rent or sublet, nor will it allow to be rented or sublet, any Designated Units (or Replacement Designated Unit, as applicable) for a term of less than 30 consecutive days at a time;
- (d) it will not suffer, cause or permit, beneficial or registered title to any of the Designated Units (or any Replacement Designated Unit, as applicable) to be sold or otherwise transferred unless title to every one of the Designated Units (or each Replacement Designated Unit, as applicable) is sold or otherwise transferred together and as a block to the same single beneficial and legal owner, and subject to Section 18;
- (e) it will not suffer, cause or permit, any of the Designated Units (or any Replacement Designated Unit, as applicable) to be contained within a strata corporation, nor will it suffer, cause or permit, that part of any Building which contains Designated Units (or any Replacement Designated Unit, as applicable) to be subdivided by strata plan; and
- (f) that any sale of any Designated Unit (or any Replacement Designated Unit, as applicable), in contravention of the covenant in Section 2(d), and any subdivision of a Building (or any replacement building(s) on the Lands) or any part thereof, including any Designated Unit (or any Replacement Designated Unit, as applicable), in contravention of the covenant in Section 2(e), will in each case be of no force or effect, and the City will be entitled to the cancellation of the registration of any

offending transfer of title or plan, as the case may be, at the Owner's expense.

3. Construction of Designated Units. The Owner shall construct, fit and finish the Designated Units in accordance with the Development Permit, the Building Permit and all applicable City by-laws and policies (including specifically, but without limitation, the Vancouver DCL By-law), all to the satisfaction of the City.

4. Occupancy Permit Hold. The Owner agrees that:

(a) no Building will be used or occupied except as follows:

- (i) the Owner will not apply for an Occupancy Permit in respect of, and will not suffer or permit the occupation of, any Building and will take no action, directly or indirectly, to compel the issuance of an Occupancy Permit for such Building; and
- (ii) the City will be under no obligation to issue any Occupancy Permit permitting the use and occupation of any Building, notwithstanding completion of construction of any such Building;

until such time as the Designated Units have been constructed and completed to the satisfaction of the City, all in accordance with the provisions of this Agreement, and an Occupancy Permit issued for each thereof; and

(b) without limiting the general scope of Section 9, the Owner does hereby waive, remise and release absolutely any and all claims against the City and City Personnel for any Losses that may derive from the withholding of an Occupancy Permit until there is compliance with the provisions of this Section 4.

5. Record Keeping. The Owner shall keep accurate records pertaining to the use and rental of the Designated Units (and any Replacement Designated Unit, as applicable) as For-Profit Affordable Rental Housing, such records to be to the satisfaction of the City Manager. At the request of the City Manager, from time to time, the Owner shall make these records available for inspection and copying by City staff, subject to applicable restrictions in any tenancy, privacy and other laws which place limitations on such disclosure.

6. Repair, Maintain and Insure. The Owner shall keep and maintain the Building(s) (or any replacement building(s) on the Lands) which contain the Designated Units, and all parts thereof in good repair and in a safe, clean, neat and tidy condition, and shall insure it to the full replacement cost against perils normally insured against in Vancouver by reasonable and prudent owners of similar buildings and lands. If any such Building(s) or any part thereof is/are damaged, the Owner shall promptly restore and repair it/them whenever and as often as damage occurs, to at least as good a state and condition as existed before such damage occurred.

Prior to the issuance of an Occupancy Permit for any Designated Unit, the Owner shall provide the City with such proof of the insurance required to be taken out pursuant to this Section 6, in form and substance satisfactory to the City. Thereafter and throughout the Term, forthwith

upon request by the City, the Owner shall provide the City with similar proof of insurance.

7. Substantial or Complete Destruction. In the event of the substantial or complete destruction or demolition of a Building prior to the 60 year anniversary of the Effective Date, the Owner shall promptly take all steps reasonably necessary to enable it to build a replacement building or buildings on the Lands, which building(s) shall be subject to the same use restrictions as the destroyed or demolished Rental Building pursuant to this Agreement for the duration of the Term.

8. Enforcement. This Agreement may be enforced by mandatory and prohibitory orders of the court. In any action to enforce this Agreement if the City is entitled to court costs, it shall be entitled to court costs on a solicitor and own client basis.

9. Release and Indemnity. The Owner hereby releases, and agrees to indemnify and save harmless, the City and all City Personnel for and from any Losses suffered, incurred or experienced by any person or entity, including, without limitation, the Owner, the City and any/all City Personnel, in connection with, that arises out of, or that would not have been incurred "but for", this Agreement. This indemnity will survive release or discharge of the Section 219 Covenant given hereby.

10. Notices. All notices, demands or requests of any kind which one party may be required or permitted to give to the other in connection with this Agreement, shall be in writing and shall be given by registered mail or personal delivery, addressed as set forth below. Any such notice, demand or request will be deemed given:

- (a) if made by registered mail, on the earlier of the day receipt is acknowledged by the addressee or the 3rd day after it was mailed, except when there is a postal service disruption during such period, in which case delivery will be deemed to be completed upon actual delivery of the notice, demand or request; and
- (b) if personally delivered, on the date when delivered.

If to the City, addressed to:

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

Attention: Managing Director of Social Development
with copy to Director of Legal Services

If to the Owner, addressed to:

Vaneagle Holdings Inc.
466 Fader Street
New Westminster, British Columbia

V3L 3T3

Attention: President

or to such other address in Canada as either party may specify in writing to the other party in the manner described above, provided that if and when the owner of the Land or any part thereof should change, in the absence of any such specification, then to the address as set out in the State of Title Certificate for that particular parcel of land.

11. Agreement Runs With the Lands. The covenants and agreements set forth herein on the part of the Owner shall be covenants the burden of which shall run with and shall bind the Lands and shall attach thereto and run with each and every part into which the same may be subdivided or consolidated, subject always to Sections 2(d), 2(e) and 2(f).

12. Enurement. This Agreement shall enure to the benefit of and be binding upon the City and its successors and assigns, and this Agreement shall enure to the benefit of and be binding upon the Owner and its successors and assigns.

13. Severability. All the obligations and covenants contained in this Agreement are severable, so that if any one or more of the obligations or covenants are held by or declared by a court of competent jurisdiction to be void or unenforceable, the balance of the obligations and covenants will remain and be binding.

14. Vancouver Charter. Nothing contained or implied herein 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* as amended from time to time 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 Roads and the Lands as if this Agreement had not been executed and delivered by the Owner and the City.

15. Waiver. The Owner acknowledges and agrees that 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.

16. Perfection of Intention. The Owner shall, 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 noted on title to the Lands as a charge against title to the Lands with priority over all other encumbrances except those in favour of the City.

17. Further Assurances. Each party shall execute such further and other documents and instruments and do such further and other acts as may be necessary to implement and carry out the provisions and intent of this Agreement.

18. Sale of Lands or Buildings. Prior to the sale or transfer of any legal or beneficial interest in the Lands and/or the Buildings or any part thereof (other than the transfer of an interest by way of mortgage, where the mortgagee has first granted the Section 219 Covenant contained herein priority, in form and substance satisfactory to the City, over its mortgage), subject always to Sections 2(d), 2(e) and 2(f), the Owner shall cause the purchaser/transferee to enter into an assumption agreement with the City, in form and substance satisfactory to the Director of Legal Services, pursuant to which the purchaser/transferee shall agree to be bound by all of the obligations, agreements, releases and indemnities of the Owner under this Agreement. The provisions in this Section 18 shall apply equally to all subsequent purchasers/transferees (other than a mortgagee that has first granted the Section 219 Covenant contained herein priority, in form and substance satisfactory to the City, over its mortgage).

IN WITNESS WHEREOF the parties have executed this Agreement on the Forms C or D which are a part hereof.

CONSENT AND PRIORITY INSTRUMENT

In this consent and priority instrument:

- (a) "Existing Charges" means the Mortgage registered under number CA1950625 and the Assignment of Rents registered under number CA1950626;
- (b) "Existing Chargeholder" means Great Vancouver Community Credit Union;
- (c) "New Charge" means the Section 219 Covenant contained in the attached Terms of Instrument - Part 2; and
- (d) words capitalized in this instrument, not otherwise defined herein, have the respective meanings 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 Owner granting the New Charge to the City; and
- (ii) agrees with the City that the New Charge charges the Lands in priority to the Existing Charges in the same manner and to the same effect as if the Owner had granted the New Charge, 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