

51 East Pender 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 51 East Pender Street, and the following legal description:

City of Vancouver
Parcel Identifier: 026-439-531
Parcel A
Block 13
District Lot 196
Group 1 New Westminster District
Plan BCP19829

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 conservation of the building 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 , 2006

Mayor

City Clerk

EXPLANATION

Authorization to enter into a Heritage Revitalization Agreement with the owner of 51 East Pender Street

After the public hearing on February 28, 2006, Council resolved to enter into a by-law to authorize an agreement with the owner of the property at 51 East Pender Street pursuant to Section 592 of the Vancouver Charter. The Director of Planning has advised that there are no prior-to conditions, and enactment of the attached by-law will implement Council's resolution.

Director of Legal Services
April 18, 2006

THIS AGREEMENT dated for reference the ____ day of _____, 2006,

BETWEEN:

JAMESON EAST VENTURES LTD.

800 – 885 West Georgia Street
Vancouver, British Columbia,
V6C 3H1

(the “Owner”)

AND:

CITY OF VANCOUVER,

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

(the “City”)

WHEREAS:

A. The Owner is the registered owner of all and singular those certain parcels or tracts of land and premises situate in the City of Vancouver, in the Province of British Columbia, legally described as:

City of Vancouver
Parcel Identifier: 026-439-531
Parcel A
Block 13
District Lot 196
Group 1 New Westminster District
Plan BCP 19829

(the “Lands”);

B. The Lands are within the HA-1 District of the City’s *Zoning and Development By-law*;

C. The Wing Sang Building presently situate on the Lands and having the postal address of 51 East Pender Street is listed in Category “B” in the Vancouver Heritage Register. In this agreement the Wing Sang Building and each replica thereof from time to time is herein called the “Heritage Building”;

D. The Owner is wanting to rehabilitate and upgrade the Heritage Building pursuant to development application DE409639 (which development application together with all development permits issued pursuant thereto and modifications thereof are collectively called the “Development Permit”) and by this agreement the Owner commits to preserving, rehabilitating, upgrading, repairing and replacing the Heritage Building as herein provided; and

E. By Section 592 of the *Vancouver Charter*, a heritage revitalization agreement may allow variations of and supplements to provisions of, among others, a subdivision by-law, a zoning by-law, a development permit and a variation of a heritage alteration permit or a by-law made under Part XXVIII of the *Vancouver Charter*.

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the sum of Ten Dollars (\$10.00) now paid by the City to the Owner and for other good and valuable consideration (the receipt and sufficiency of which the Owner hereby acknowledges) the Owner and the City each covenant with the other pursuant to Section 592 of the *Vancouver Charter* as follows:

1. The Owner shall develop the Lands as contemplated in the Development Permit.
2. (a) To assist the Owner in defraying the obligations of this agreement, it is agreed that the HA-1 District Schedule of the *Zoning and Development Bylaw* is hereby varied and supplemented in respect of the Lands by, subject to section 2(b) of this agreement, assigning to the Lands additional development rights of 159,162 square feet (which includes residual density of 14,348 square feet) square feet of floor area which additional floor area shall not be built out on the Lands, but rather shall be available for transfer to other development sites, subject to the City’s policies concerning the transferring of density; provided that as the City permits and perfects the transfer of all or part of the additional 159,162 square feet to other development sites, this agreement shall be deemed to be amended accordingly and the additional development rights assigned to the Lands shall be deemed to be diminished accordingly. The City may but shall not be required to allow its Development Permit Board to effect transfer of this additional 159,162 square feet of floor area in the manner set out in section 595A of the *Vancouver Charter*. Without limiting the generality of the foregoing, in the event that Council considers the same to be necessary or prudent, the recipient site(s) shall, prior to receiving such additional development (density) rights, be rezoned so as to accommodate such additional development (density) rights.
- (b) Notwithstanding section 2(a) of this agreement, 20,000 square feet (the “Holdback”) of the additional development rights shall be held back and not be permitted to be transferred from the Lands for a period of one year from the date of issuance of an occupancy permit for the Heritage Building (the “Hold-Back Period”). In the event that during the Hold-Back Period, the Owner receives no Federal Historic Places Initiative grants (“FHPI Grant”) or similar grants or any promises for FHPI Grants or similar grants, then, provided that the Owner has complied with all of the terms and conditions of this agreement and all other agreements between the City and the Owner with respect to the subject matter of this agreement, then the Owner shall be entitled, on the terms and conditions set-out in this agreement, to transfer the

Holdback. In the event that, during the Hold-Back Period, the Owner receives a FHPI Grant or similar grant, or the promise of a FHPI Grant or similar grant, then, up to the amount of the Hold-Back, the amount development rights granted pursuant to this agreement shall be reduced by a ratio of 1 square foot of development rights for each \$50 of FHPI Grant or similar grant received or promised (for example, if a \$500,000 grant is received or promised, then the amount of the additional development rights shall be reduced by 10,000 square feet) and the balance, if any, of the Holdback shall then be available to the Owner for transfer on the terms and conditions set out in this agreement.

3. The Owner hereby covenants that it shall, forthwith (if it has not done so already) apply for and use best efforts to obtain FHPI Grants or similar grants. In the event the Owner fails to make such applications in the manner required or fails to use best efforts to obtain FHPI Grants or similar grants, the City may, in its absolute discretion, reduce the additional development rights provided for in section 2(a) of this agreement.

4. To permit development and use of the Heritage Building as contemplated in the Development Permit, it is agreed that section 4.2.1 (Frontage) of the HA-1 District Schedule of the *Zoning and Development By-law* is amended so that where it reads “7.6m” in subsection 4.2.1 such “7.6m” shall be replaced with “9.09m”.

5. The Heritage Building is the only building permitted on the Lands.

6. The Owner shall preserve and protect the Heritage Building as would a reasonable and prudent owner.

7. The Owner shall keep the exterior of the Heritage Building in good appearance and in good repair.

8. The Owner shall keep the structure of the Heritage Building in good repair.

9. If the Heritage Building is damaged, the Owner shall restore its structure and exterior whenever and as often damage shall occur. If the Heritage Building is destroyed, the Owner shall replicate its structure and exterior at the same location whenever and as often as destruction shall occur.

10. The Owner shall not alter the appearance of, renovate, reconfigure or replace the Heritage Building except as may be permitted by a heritage alteration permit and the terms, requirements and conditions thereof.

11. Although the Owner is not required to insure the Heritage Building, the City encourages the Owner to do so because, as the Owner agrees, the want of insurance coverage shall not relieve the Owner of its obligations herein to repair and replace the Heritage Building.

12. The City may affix a commemorative plaque to the Heritage Building which bears witness to the historical and architectural significance of the Heritage Building and the Owner agrees to refrain from obscuring, defacing, reversing or removing same.

13. The City shall not be obliged to issue any permit or give any permission contrary to the terms of this agreement. The City may enforce this agreement by mandatory and prohibitory orders of the law courts. In any action to enforce this agreement the City shall be entitled to court costs on a solicitor and own client basis.

14. The Owner agrees that the by-law variations effected by this agreement are full and fair compensation for the obligations and restrictions on the Owner by this agreement and the Owner waives and renounces all claims for further or other compensation by reason of this agreement.

15. The Owner will indemnify and save harmless the City and its officials, employees, contractors, agents and licensees, from and against all liabilities, actions, statutory or other proceedings, judgements, investigations, claims, losses, loss of profit, damages, consequential damages, fines, penalties, costs and legal costs on a solicitor own client basis which the City may suffer or incur arising out of or in any way connected with:

- (a) the inability of any recipient site to use, in whole or in part, any of the additional development (density) rights that may be transferred pursuant to this agreement whether such inability arises from the decision of the Development Permit Board, City Council, a court of competent jurisdiction, or otherwise; or
- (b) this agreement.

The indemnity set out in this section 15 shall survive the expiration or earlier termination of this agreement.

16. The Owner hereby releases and discharges the City and its officials, employees, contractors, agents and licensees, from and against all liabilities, actions, statutory or other proceedings, judgements, investigations, claims, losses, loss of profit, damages or consequential damages which may arise or accrue to the Owner by reason of the City or its officials, employees, contractors, agents and licensees, exercising any of its rights under this agreement and, without limiting the generality of the foregoing, resulting from the inability of any recipient site to use, in whole or in part, any of the additional development (density) rights that may be transferred pursuant to this agreement whether such inability arises from the decision of the Development Permit Board, City Council, a court of competent jurisdiction, or otherwise. The release set out in this section 16 shall survive the expiration or earlier termination of this agreement.

17. Nothing contained or implied herein shall 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 as if this Agreement had not been executed and delivered by the Owner and the City.

18. Nothing in this agreement gives express or implied permission to subdivide by way of strata plan or air space plan and nothing in this agreement precludes subdivision by way of strata plan or air space plan. If the Owner wishes to subdivide the Lands and the Heritage Building by way of strata plan or air space plan, the Owner shall apply to the City for such permission in the usual way.

19. Any notice, approval, consent, request, confirmation, or demand required or permitted under this agreement must be in writing, and the sender must deliver it by prepaid registered mail from any post office in British Columbia, by fax or by personal service addressed to the City as follows:

City of Vancouver
 453 West 12th Avenue
 Vancouver, British Columbia
 V5Y 1V4
 Fax: 604.871.6119

Attention: Director of Current Planning c/of Heritage Group

with a copy to:

City of Vancouver
 453 West 12th Avenue
 Vancouver, British Columbia
 V5Y 1V4
 Fax: 604.873.7445

Attention: Director of Legal Services

or to the Company as follows:

Jameson East Ventures Ltd.
 800 – 885 West Georgia Street
 Vancouver, British Columbia
 V6C 3H1
 Fax: _____

Attention: _____

or to such other address or fax number in the Province of British Columbia of which either party may notify the other according to the requirements of this section 16. Service will be deemed complete, if made by registered mail 72 hours after the date and hour of mailing; if made by faxed transmission on the first business day after the date of transmission; and if made by personal service upon the effecting of such service.

20. Nothing in this agreement gives the City an interest in the fee of the soil of the Lands or the subdivided parts thereof.

21. No alleged waiver of any breach of this agreement is effective unless it is an express waiver in writing of the breach in respect of which it is asserted against the party alleged to have given the waiver. No waiver by the City or the Owner of any breach of this agreement operates as a waiver of any other breach of this agreement.

22. If any term of this agreement is held to be invalid, illegal or unenforceable by a court having the jurisdiction to do so, that term is to be considered to have been severed from the rest of this agreement and the rest of this agreement remains in force unaffected by that holding or by the severance of that term.

23. The parties hereby agree to execute such further documents and assurances as are required to carry out and more fully effect the intent of this Agreement.

24. This agreement continues in full force and effect until such time, if ever, as it may be lawfully ended.

25. If the Lands are subdivided by way of a strata plan:

- (a) this agreement shall charge each strata lot and shall be noted on the common property sheet of the strata corporation;
- (b) the strata corporation or strata corporations so created shall be responsible for the performance and observance of the Owner's covenants and obligations herein at the expense of the strata lot owner; and
- (c) the liability of each strata lot owner for the performance and observance of the Owner's covenants and obligations herein shall be in proportion to the unit entitlement of his, hers or its strata lot as established by the strata plan and shall be treated as a common expense and all strata lot owners shall contribute to such costs in proportion to their unit entitlement.

26. This agreement shall enure to the benefit of and be binding upon the Owner and its successors and trustees and this agreement shall enure to the benefit of and be binding upon the City and its successors and assigns and this agreement shall charge and run with the Lands and enure to the benefit of and be binding upon the owners from time to time of the Lands and all parties claiming through such owners and their respective heirs, executors, administrators, trustees and successors PROVIDED THAT, this agreement shall be read and shall apply such that the Owner and the respective successors in title to the Owner shall only be bound to perform and observe the Owner's obligations herein so long as the Owner or the successors in title hold an interest in the Lands AND following subdivision of the Lands by strata plan this agreement shall charge and run with each strata lot and enure to the benefit of and be binding upon the owners from time to time of the strata lots and all parties claiming through such owners and their respective heirs, executors, administrators, trustees, and successors and this agreement shall enure to the benefit of and be binding upon the strata corporation so far as concerns the common property of such strata plan.

27. Words herein importing the singular number or the masculine gender only shall include more persons, parties or things of the same kind than one, and females or corporations as well as males, and the converse whenever the context requires.

In Witness whereof the parties have signed these presents as hereunder shown:

Execution Date
Y M D

Officer:

Party:

JAMESON EAST VENTURES LTD. by its Authorized Signatories:

_____ 06

_____ sign and print name

_____ sign and print name

CITY OF VANCOUVER by its Authorized Signatory:

_____ 06

Doug Long, Solicitor
City of Vancouver
453 West 12th Avenue
Vancouver, B.C., V5Y 1V4
604-871-6924

_____ Frances J. Connell/Graham P. Johnsen

Approved by By-law No. _____

MEMORANDUM AS TO ENCUMBRANCES, LIENS AND INTERESTS

BCMP MORTGAGE INVESTMENT CORPORATION (the "Chargeholder")
Holder of MORTGAGES BW456255 and BX157326 and ASSIGNMENTS OF RENTS
BW456256 and BX157327, (collectively the "Charges")
charging Parcel A Block 13 District Lot 196 Group 1 New Westminster District Plan BCP19829
(the "Lands")

For Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and agreed to by the Chargeholder, the Chargeholder, being the holder of the Charges, hereby approve, join in and consent to the granting of the Heritage Revitalization Agreement (the "Encumbrance") attached, and consent and agree that the Encumbrance shall be binding upon the Chargeholder's interest in or charge upon the Lands and shall be an encumbrance upon the Lands in priority to the Charges in the same manner and to the same effect as if the Encumbrance had been granted and registered against title to the Lands prior to the dating, execution and registration of the Charges and the advance of any monies thereunder.

Execution Date
Y M D

Officer:

Party:

BCMP MORTGAGE INVESTMENT CORPORATION by its Authorized Signatories:

(as to both signatures)

06

sign and print name:

sign and print name:

END OF DOCUMENT