

101 West Hastings Street
100 West Cordova 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 properties bearing the following legal descriptions:

Parcel Identifier: 003-144-143

The East ½ of Lot 7 Block 4 Old Granville Townsite Plan 168;

Parcel Identifier: 003-142-761

The West 33 feet of Lot 6 Block 4 Old Granville Townsite Plan 168;

Parcel Identifier: 003-141-560

Lot B (Reference Plan 1769) of Lots 5 and 6 Block 4 Old Granville Townsite Plan 168;

Parcel Identifier: 015-712-869

The East 46 feet of Lot 11 (Reference Plan 410) Block 4 Old Granville Townsite Plan 168;

Parcel Identifier: 015-712-907

The West 25 feet of Lot 12 Block 4 Old Granville Townsite Plan 168;

Parcel Identifier: 015-712-915

The East 25 feet of the West 50 feet of Lot 12 Block 4 Old Granville Townsite Plan 168;

Parcel Identifier: 024-317-560

Lot E Block 4 Old Granville Townsite New Westminster District Plan LMP40092;

Lane dedicated by the deposit of Plan 168, Block 4 Old Granville Townsite; and

Lane dedicated by the deposit of Plan LMP40092, Block 4 Old Granville Townsite;

all as shown on the plan attached to this By-law as Schedule A, contain a heritage building listed on the Vancouver Heritage Register as a Category C Building.

Council is of the opinion that the building has sufficient heritage value to justify its conservation, and Council and the owner of the properties 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 , 2006

Mayor

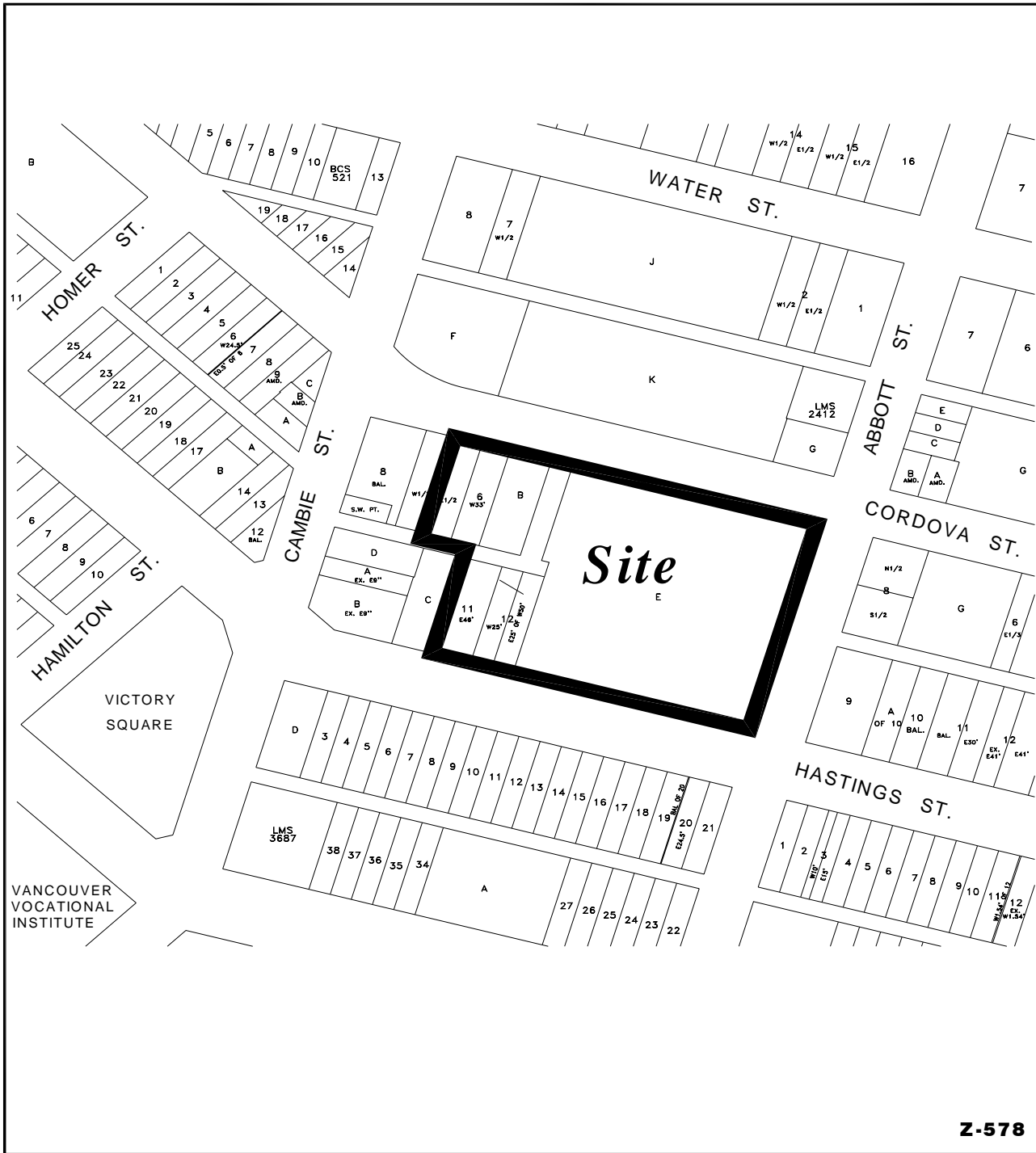
City Clerk

EXPLANATION

Authorization to enter into a Heritage Revitalization Agreement with the owner of 101 West Hastings Street and 100 West Cordova Street

After the public hearing on March 21, 2006, Council resolved to enter into a by-law to authorize an agreement with the owner of this property 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



Z-578

RZ - 101 & 149 W. Hastings St. & 150 W. Cordova St.

map: 1 of 1

scale: 1:2000



City of Vancouver

date: Mar. 8, 2006

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

BETWEEN:

101 WEST HASTINGS HOLDING LTD.

(Incorporation No. 0739552),
19th Floor, 885 West Georgia Street,
Vancouver, British Columbia
V6C 3H4

(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, more particularly described in Schedule "A" attached hereto ((the "Lands"));

B. The Lands are within the (DD) Downtown District of the City's *Zoning and Development By-law*;

C. The Woodward's Building presently situate on the Lands (the "Woodward's Building") is listed in Category "C" in the Vancouver Heritage Register and municipally designated as a provincial heritage property. In this agreement the term "Heritage Building" includes:

- (i) that portion, together with each replacement thereof, of the Woodward's Building built between 1903 and 1908 (which portion is more particularly described in the Development Permit - as herein defined) and includes, without limiting the generality of the foregoing:
 - (1) the six (6) storey masonry façade fronting approximately forty (40) metres onto Abbott Street; and
 - (2) the six (6) storey masonry façade fronting approximately twenty (20) metres onto Hastings Street;

- (ii) salvaged materials from portions of the Woodward's Building, as more particularly described in Schedule "B" attached hereto;
- (iii) the Woodward's "W" sign and supporting tower which comprises, without limitation, the predominantly red, illuminated, rotating "W Sign" and supporting A-shaped, eight (8) level, open steel tower constructed in or about 1927 (currently located at the top of 1903/1908 portion of the Woodward's Building) and all structures and equipment in connection therewith or appurtenant thereto (collectively the "W Sign"); and
- (iv) cultural memories program, interpretive program and interpretive mural all as more particularly described in the Development Permit (as herein defined);

D. Pursuant to development application DE409942 (development application DE409942 together with all development permits issued pursuant thereto and all amendments, modifications and replacements thereof are collectively called the "Development Permit") the Owner proposes to rehabilitate and upgrade the Heritage Building; 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 (as covenants running with and charging the Lands) 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 and as contemplated by this agreement.
2. (a) To assist the Owner in defraying the cost of rehabilitating and upgrading the Heritage Building as contemplated in the Development Permit and in this agreement, the (DD) Downtown District Schedule of the *Zoning and Development Bylaw* is hereby varied and supplemented in respect of the Lands by assigning to the Lands additional development rights of 187,000 square feet of floor area which additional floor area shall not be built on the Lands, but rather shall be available for transfer to other development site(s), 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 187,000 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 187,000 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 City Council considers the same to be necessary, the recipient site(s) shall, prior to receiving such additional development rights, be rezoned so as to accommodate such additional development (density) rights.

- (b) Notwithstanding section 2(a) of this agreement, 11,764 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 federal grants or any commitments for FHPI Grants or similar federal 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 federal grant or commitment of a FHPI Grant or similar grant, then, up to the amount of the Hold-Back, the amount of development rights granted pursuant to this agreement shall be reduced by a ratio of 1 square foot of development rights for each \$85 of FHPI Grant or similar federal grant received or committed to (for example, if a \$850,000 grant is received or committed to, 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 commercially reasonable efforts to obtain FHPI Grants or similar federal grants. In the event the Owner fails to make such applications in the manner required or fails to use commercially reasonable efforts to obtain FHPI Grants or similar federal grants, then the City may, in its absolute discretion, reduce the additional development rights provided for in section 2(a) of this agreement.
4. The Owner shall preserve and protect the Heritage Building as would a reasonable and prudent owner.
5. The Owner shall keep the exterior of the Heritage Building in good appearance and in good repair as would a reasonable and prudent owner.
6. The Owner shall keep the structure of the Heritage Building in good repair as would a reasonable and prudent owner.
7. (a) If the Heritage Building is damaged, it shall be repaired if lawful and economic and if not, it shall be replaced. In determining whether it is economic to repair the Heritage Building, the parties will consider only land economic factors including the cost of repair, the cost of constructing a replacement building to be constructed as

required by this agreement, the market value of a replacement building after the completion of such repair and the fact that heritage incentives (including bonus density) have been granted herein. If the parties cannot agree on whether it is economic to repair the Heritage Building, such question may be determined by arbitration as provided herein. If the parties or the arbitrator agree that it is uneconomic to repair the Heritage Building, or if the Heritage Building is destroyed, the Owner shall only be permitted to build on the Lands a building of similar massing, height and proportions as the original Heritage Building.

- (b) All disputes arising from paragraph 6 of this agreement shall be determined by arbitration. Within thirty (30) days following written notice of the dispute by either party to the other, such dispute shall be referred to a single arbitrator to be chosen by the Owner and the City, provided that if the Owner and the City do not agree as to the choice of a single arbitrator, then by three (3) arbitrators, one (1) of whom shall be chosen by the Owner, one (1) of whom shall be chosen by the City and the third by the two (2) so chosen and the third arbitrator so chosen shall be the chairman. If the arbitrator(s) conclude that any provision herein is vague, ambiguous, uncertain, imprecise or otherwise defective by reason of the language used or by reason of error or omission, the arbitrator(s) shall cure same by interpreting this agreement so as to avoid such vagueness, ambiguity, uncertainty, imprecision, defect, error or omission and give full effect to the intention of the parties. The award will be made by the majority of the arbitrators. If within fifteen (15) days or such extended time as the parties may agree upon, a party who has been notified of a dispute fails to appoint an arbitrator or the two (2) arbitrators appointed by the parties do not agree upon a third arbitrator, then the party or parties not in default may apply to the British Columbia International Commercial Arbitration Centre or, if a successor thereto does not exist at such time, to a Judge of the Supreme Court of British Columbia for the appointment of an arbitrator to represent the party or parties in default or a third arbitrator or both of such arbitrators. The costs of the reference and award shall be in the discretion of the arbitrators who may direct to and by whom and in what manner those costs or any part thereof shall be paid and may tax or settle the amount of costs to be so paid or any part thereof and may award costs to be paid as between solicitor and client. Except as to matters otherwise provided herein, the provisions of the *Commercial Arbitration Act of British Columbia*, as amended or re-enacted from time to time, shall apply.

8. The Owner may not alter the appearance of, renovate, reconfigure or replace the Heritage Building, or any part thereof, or the Woodward's Building, or any part thereof, except as may be permitted by a heritage alteration permit issued by the City and the terms, requirements and conditions of this agreement.

9. The Owner shall, to the satisfaction of the City acting reasonably, insure the Heritage Building and its replacements to their full replacement value against all perils including, without limitation damage or destruction by earthquake.

10. 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 or removing same.

11. 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 injunctions. In any action to enforce this agreement the City shall be entitled to court costs on a solicitor and own client basis.

12. 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.

13. For the Development Permit, the City agrees that By-law No. 8149, being the Vancouver Development Costs Levy By-law, is hereby varied in respect to the Lands so that the development costs levy applying to the Lands in respect to the Development Permit is reduced to \$0.01/m² of floor space.

14. 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, except to the extent of any default of the City hereunder.

The indemnity set out in this section 14 shall survive the expiration or earlier termination of this agreement.

15. 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 lawful decision of the Development Permit Board or City Council or the decision of a court of competent jurisdiction, or otherwise. The release set out in this section 15 shall survive the expiration or earlier termination of this agreement.

16. 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 or the Heritage Building by way of strata plan or air space plan, the Owner shall apply to the City for such permission in accordance with applicable City policies and procedures.

17. Nothing contained or implied in this agreement will derogate from the obligations of the Owner under any other agreement with the City or, if the City so elects, prejudice or affect the City's rights, powers, duties or obligations in the exercise of its functions pursuant to the *Vancouver Charter* 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 Lands as if this agreement had not been executed and delivered by the Owner and the City.

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

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/o 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:

101 West Hastings Holding Ltd.
 501-1067 West Cordova Street
 Vancouver, British Columbia
 V6C 1C7
 Fax: 604.893.1708

Attention: Mr. Ian Gillespie

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 19. Service will be deemed complete, if made by registered mail seventy-two (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. This agreement continues in full force and effect until such time, if ever, as it may be lawfully ended.

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. 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.

25. 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 all parties claiming through such owners and their respective heirs.

26. 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:

101 WEST HASTINGS HOLDING LTD. by its authorized signatories:

_____ 06
(as to both signatures)

Sign & Print Name:

Sign & Print Name:

CITY OF VANCOUVER by its Authorized Signatory:

_____ 06
Doug Long, Solicitor
453 West 12th Avenue
Vancouver BC V5Y 1V4
Tel: 604-871-6924

Frances J. Connell/Graham P. Johnsen

Approved by By-law No. _____

SCHEDULE "A"

The following lands and premises (or the lands and premises resulting from the consolidation of the same) legally known and described as:

City of Vancouver

Parcel Identifier: 003-144-143

The East ½ of Lot 7 Block 4 Old Granville Townsite Plan 168;

Parcel Identifier: 003-142-761

The West 33 feet of Lot 6 Block 4 Old Granville Townsite Plan 168;

Parcel Identifier: 003-141-560

Lot B (Reference Plan 1769) of Lots 5 and 6 Block 4 Old Granville Townsite Plan 168;

Parcel Identifier: 015-712-869

The East 46 feet of Lot 11 (Reference Plan 410) Block 4 Old Granville Townsite Plan 168;

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Parcel Identifier: 015-712-915

The East 25 feet of the West 50 feet of Lot 12 Block 4 Old Granville Townsite Plan 168;

Parcel Identifier: 024-317-560

Lot E Block 4 Old Granville Townsite New Westminster District Plan LMP40092;

Lane dedicated by the deposit of Plan 168 Block 4 Old Granville Townsite; and

Lane dedicated by the deposit of Plan LMP40092 Block 4 Old Granville Townsite.

SCHEDULE "B"

Woodward's Demolition Tender: Components to be Salvaged
Schedule of Exterior Components

November 2005

Hastings Street Elevation (Drawing H-5)

H-1 Portion of exterior wall, between grid lines 9 and 10, for the full height of the ground floor. Includes brick and stone walls, pilasters, and spandrel; doors, including all surrounds and hardware; and all other fittings or fixtures within this area.

H-2 Wall section from grid line 11 to part-way between grid lines 12 and 13, from the lintels of the 5th-floor windows to the sills of the 7th-floor windows, including all brickwork, windows, extant metalwork (if any survives), fixtures, fittings, and hardware.

H-3 Full display window between grid lines 5 and 6, including brickwork, stonework, pilasters at either side, transom course, and all glass, fixtures, fittings, and hardware.

H-4 Pavement materials (brick) between grid lines 13A and 14, in front of fire exit.

H-5 Pavement materials (including brick) between grid lines 7 and 8, in front of fire exit.

H-6 Entrance doors between grid lines 4 and 5, including all hardware.

Abbott Street Elevation (Drawing H-6)

A-1 Pavement mosaic between grid lines F and G.

A-2 Pavement materials (brick or terrazzo) in front of fire exit to north of grid line F.

A-3 Flagpole over grid line A, including all hardware and fittings.

Cordova Street Elevation (Drawing H-7)

C-1 Flagpole at top, between grid lines 12 and 13, including all hardware and fittings.

C-2 Cornice over 6th floor in its entirety, between grid lines 5 and 12, including all hangers, fittings, and hardware. (The length of cornice between grid lines 12 and 13 forms a part of component C-9.)

C-3 Entrance doors between grid lines 9 and 10, including hardware and fittings.

Woodward's Demolition Tender: Components to be Salvaged November 2005

C-4 Entrance doors between grid lines 4 and 5, including hardware and fittings.

C-5 Portion of exterior wall that is the corner overhanging bay, west of grid line 15, from fascia above ground floor to sills of windows on third floor, including all brickwork, windows and surrounds, ornament, and all fixtures, fittings, and hardware. Includes return on Parking Elevation for the width of the corner pilaster strip.

C-6 Pavement mosaic between grid lines 4 and 5.

C-7 Entry sill between grid lines 9 and 10.

C-8 Pavement mosaic between grid lines 12 and 13.

C-9 Portion of exterior wall, between grid lines 12 and 13, from the sills of the windows on the 6th floor to the parapet above the 7th floor, including brick walls, pilasters, and spandrels; also the pressed metal cornice; also all windows, including surrounds and hardware; and all other fittings or fixtures within this area.

Parking (West) Elevation (Drawing H-8)

P-1 Woodward's sign that is affixed to wall over 4th floor (at first parapet), over grid line C, including all fittings, fixtures, electrical components, and hardware.

1-2 Garage door and window above. (Described elsewhere with interior components)

3-1 Two windows from the former Woodward's auditorium. (Described elsewhere with interior components)

END OF DOCUMENT