

EXPLANATION

Vehicles for Hire By-law amending by-law

The attached by-law will implement Council's resolution of June 27, 2006 to change the term for chauffeurs' permits, and also corrects two grammatical errors in the by-law.

Director of Legal Services
July 11, 2006

BY-LAW NO. _____



**A By-law to amend Vehicles for Hire By-law No. 6066
regarding chauffeurs' permits**

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

1. Council repeals section 6(8) of the Vehicles for Hire By-law, and substitutes:

“(8) If a permit issued under this section 6 is in effect on July 11, 2006, Council hereby deems that permit to continue in effect until the day preceding the permit holder’s birthday next following February 28, 2007 unless such permit becomes sooner forfeited, suspended, or revoked.

(9) A permit issued under this section 6 expires on the day preceding the permit holder’s birthday next following the date of issuance of such permit unless the permit falls under subsection (8) or becomes sooner forfeited, suspended, or revoked.”

2. From section 7(3)(a) of the Vehicles for Hire By-law, Council strikes out “an”, and substitutes “a”, and strikes out “and” before “satisfactory”.

3. 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

Vehicles for Hire By-law amending by-law

The attached by-law will implement Council's resolution of June 27, 2006 to change the requirements for advanced training for taxicab drivers.

Director of Legal Services
July 11, 2006

BY-LAW NO. _____



**A By-law to amend Vehicles for Hire By-law No. 6066
regarding advanced taxicab driver training**

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

1. Council repeals section 6(3) of the Vehicles for Hire By-law, and substitutes:

“(3) Despite anything to the contrary in this By-law, the Chief Constable must refuse to issue a chauffeur’s permit to a person to drive, operate, or be in charge of a taxicab unless the Chief Constable is satisfied that the applicant has successfully completed:

- (a) at least 27 hours of training designed to develop the driver’s knowledge, skills, and attitudes, through the Taxihost Program Level 1 course for drivers provided by the Justice Institute of British Columbia, or other course approved by the Inspector; and
- (b) at least 18 hours of advanced training designed to develop the driver’s ability to transport people with disabilities and using mobility aids, driver safety including assault avoidance and awareness, collision prevention and advanced geography through the Taxihost Program Level 2 course for drivers provided by the Justice Institute of British Columbia, or other course approved by the Inspector, by December 31, 2006, except that if the applicant has held a chauffeur’s permit issued by the city for:
 - (i) two to four years less one day from the date the applicant first obtained such a permit to the date of enactment of this By-law, the applicant may complete the advanced geography portion of the course in writing or by way of an oral interview with a staff person at the Justice Institute of British Columbia, or
 - (ii) four years or more, the applicant need not complete the advanced geography portion of the course.”

EXPLANATION**Authorization to enter into a
Heritage Revitalization Agreement
with the owner of 40 Powell Street**

After the public hearing on April 18, 2006, Council resolved to enter into a by-law to authorize an agreement with the owner of the property at 40 Powell Street pursuant to Section 592 of the Vancouver Charter. The Director of Planning has advised that any prior-to conditions are complete, and enactment of the attached by-law will implement Council's resolution.

Director of Legal Services
July 11, 2006

40 Powell 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 civic address of 40 Powell Street, and the following legal descriptions:

PID: 003-579-395, Lot 3

PID: 003-579-620, Lot 4, except that part shown as right-of-way in Reference Plan 1441

Both of:

Block 7

District Lot 196

Plan 184

contain 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 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

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

BETWEEN:

WEST 8TH HOLDINGS LTD.
(Incorporation No. 359318),
Suite 215 - 1008 Homer Street,
Vancouver, British Columbia
V6B 2X1

(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: 003-579-395 Lot 3 Block 7 District Lot 196 Plan 184		City of Vancouver Parcel Identifier: 003-579-620 Lot 4, except that part shown as right-of-way in reference plan 1441 Block 7 District Lot 196 Plan 184
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(collectively the "Lands");

B. The Lands are within the HA-2 (Gastown Historic) District of the City's *Zoning and Development By-law*;

C. The MacDonald and Co Building presently situate on the Lands is listed in Category "B" on the Vancouver Heritage Register. In this agreement the term "Heritage Building" means the MacDonald and Co Building and all replacements thereof;

D. Pursuant to development application DE409700 (development application DE409700 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 HA-2 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 76,595 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 76,595 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 76,595 square feet of floor area in the manner set out in section 595A of the *Vancouver Charter*. The 76,595 square feet of floor area includes a residual density of 4,761 square feet.
- (b) Notwithstanding section 2(a) of this agreement, 20,000 square feet (the "Holdback" - which is based on a possible federal grant of \$1,000,000) of the additional development rights shall be held back for one year 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 grant, no Canada's Historic Places Initiative grant, or similar federal grants (collectively, the "Federal Grant"), then, provided the Owner has complied with all of the terms and conditions of this agreement and all such other agreements between the City and the Owner with respect to the subject matter of

this agreement, the Owner shall, upon the expiration of the Holdback Period, 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 Federal Grant or promise for a Federal 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 Federal 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, upon the expiration of the Hold-Back Period, 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 a Federal Grant. In the event the Owner fails to make such applications in the manner required or fails to use best efforts to obtain a Federal Grant, 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 7 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, 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. 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 13 shall survive the expiration or earlier termination of this agreement.

14. 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 14 shall survive the expiration or earlier termination of this agreement.

15. 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.

16. 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.

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

18. 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:

WEST 8TH HOLDINGS LTD.
 Suite 215 - 1008 Homer Street
 Vancouver, British Columbia
 V6B 2X1

Fax: 604.681.7381

Attention: Messrs. Giovanni Zen and Colin Moran

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 18. 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.

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

20. 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.

21. 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.

22. 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.

23. 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.

24. 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.

25. 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:

WEST 8TH HOLDINGS LTD. by its
authorized signatories:

(as to both signatures) 06

Sign & Print Name:

Sign & Print Name:

CITY OF VANCOUVER by its
Authorized Signatory:

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

Frances J. Connell/Graham P. Johnsen

Approved by By-law No. _____

MEMORANDUM AS TO ENCUMBRANCES, LIENS AND INTERESTS

PEOPLES TRUST COMPANY (the "Chargeholder")
Holder of Mortgage BT119575, Assignment of Rents BT119576 and
Notice of a Security Interest BT119579 (together called the "Charge")
charging Lot 3 Block 7 District Lot 196 Plan 184 and
Lot 4, except that part shown as right-of-way in reference plan 1441,
Block 7 District Lot 196 Plan 184 (the "Lands")

For Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and agreed to by the Chargeholder, the Chargeholder, being the holder of the Charge, hereby 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 Charge in the same manner and to the same effect as if the Encumbrance had been granted and registered against title to the Lands prior to the dating, execution and registration of the Charge and the advance of any monies thereunder.

Execution Date
Y M D

Officer:

Party:

PEOPLES TRUST COMPANY by
its Authorized Signatories:

_____ 06
(as to both signatures)

Sign & Print Name:

Sign & Print Name:

MEMORANDUM AS TO ENCUMBRANCES, LIENS AND INTERESTS

SAFETY FIRST SAVINGS & MORTGAGE CORP., AS TO AN UNDIVIDED 565/1545 INTEREST, INVAN MORTGAGE CORP., AS TO AN UNDIVIDED 715/1545 INTEREST AND LANGLEY MORTGAGE CORP., AS TO AN UNDIVIDED 265/1545 INTEREST (together called the "Chargeholder")

Holder of Mortgage BT119580 and Assignment of Rents BT119581 (together called the "Charge") charging Lot 3 Block 7 District Lot 196 Plan 184 and Lot 4, except that part shown as right-of-way in reference plan 1441, Block 7 District Lot 196 Plan 184 (the "Lands")

For Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and agreed to by the Chargeholder, the Chargeholder, being the holder of the Charge, hereby 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 Charge in the same manner and to the same effect as if the Encumbrance had been granted and

registered against title to the Lands prior to the dating, execution and registration of the Charge and the advance of any monies thereunder.

Execution Date

Y M D

Officer:

Parties:

SAFETY FIRST SAVINGS &
MORTGAGE CORP. by its
Authorized Signatories:

(as to both signatures) 06

Sign & Print Name:

Sign & Print Name:

INVAN MORTGAGE CORP. by
its Authorized Signatories:

(as to both signatures) 06

Sign & Print Name:

Sign & Print Name:

LANGLEY MORTGAGE CORP.
by its Authorized
Signatories:

(as to both signatures) 06

Sign & Print Name:

Sign & Print Name:

MEMORANDUM AS TO ENCUMBRANCES, LIENS AND INTERESTS

INVAN MORTGAGE CORP., AS TO AN UNDIVIDED 1/2 INTEREST AND LANGLEY MORTGAGE CORP.,
AS TO AN UNDIVIDED 1/2 INTEREST (together called the "Chargeholder")
Holder of Mortgage BW532727 and Assignment of Rents
BW532728 (together called the "Charge")
charging Lot 3 Block 7 District Lot 196 Plan 184 and
Lot 4, except that part shown as right-of-way in reference plan 1441,
Block 7 District Lot 196 Plan 184 (the "Lands")

For Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and agreed to by the Chargeholder, the Chargeholder, being the holder of the Charge, hereby 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 Charge in the same manner and to the same effect as if the Encumbrance had been granted and registered against title to the Lands prior to the dating, execution and registration of the Charge and the advance of any monies thereunder.

Execution Date
Y M D

Officer:

Parties:

INVAN MORTGAGE CORP. by
its Authorized Signatories:

(as to both signatures) 06

Sign & Print Name:

Sign & Print Name:

LANGLEY MORTGAGE CORP.
by its Authorized
Signatories:

(as to both signatures) 06

Sign & Print Name:

Sign & Print Name:

END OF DOCUMENT

EXPLANATION**Heritage Taxation Exemption By-law
re 40 Powell Street**

On April 18, 2006, Council approved a heritage taxation exemption for eligible heritage property at 40 Powell Street to a value of \$741,805.00 or 10 years, whichever first occurs.

Director of Legal Services
July 11, 2006

BY-LAW NO. _____



**Heritage Taxation Exemption By-law
for 40 Powell Street**

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

1. Council exempts from real property taxation the eligible heritage property legally described as PID: 003-579-395, Lot 3 and PID: 003-579-620, Lot 4, except that part shown as right-of-way in Reference Plan 1441, Both of: Block 7, District Lot 196, Plan 184:

- (a) to a value of \$741,805.00, calculated from and after the commencement date;
or
- (b) for 10 years, calculated from and after the commencement date;

whichever first occurs.

2. If issuance of an occupancy permit for the heritage rehabilitation work authorized under development application number DE409700 occurs:

- (a) before October 31st, the commencement date will be January 1st of the next calendar year;
- (b) on or after October 31st, the commencement date will be January 1st of the calendar year after the next calendar year.

3. If the applicant for the development permit does not fulfil, or cause to be fulfilled, all requirements necessary to obtain issuance of an occupancy permit for the work authorized pursuant to development application number DE409700 within 60 months after the enactment date of this By-law, this By-law will expire and have no further force or effect.

4. 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 163 West Hastings Street**

After the public hearing on May 16, 2006, Council resolved to enter into a by-law to authorize an agreement with the owner of the property at 163 West Hastings Street pursuant to Section 592 of the Vancouver Charter. The Director of Planning has advised that any prior-to conditions are complete, and enactment of the attached by-law will implement Council's resolution.

Director of Legal Services
July 11, 2006

163 West Hastings 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 163 West Hastings Street, and the following legal description:

PID: 026-689-979

Lot F

Block 4

Old Granville Townsite

New Westminster District

Plan BCP24070

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 _____, 2006

Mayor

City Clerk

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

BETWEEN:

SALIENT DEVELOPMENTS (FLACK) LTD.

(Incorporation No. 0730671),
Suite 6, Gaoler's Mews
209 Carrall Street
Vancouver, British Columbia
V6B 4K7

(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: 026-689-979
Lot F Block 4 Old Granville Townsite New Westminster District Plan BCP24070:

(the "Lands");

B. The Lands are within the HA-2 (Gastown Historic) District of the City's *Zoning and Development By-law*;

C. The "Flack Block" presently situate on the Lands is listed in Category "B" on the Vancouver Heritage Register. In this agreement the term "Heritage Building" means the "Flack Block" and all replacements thereof;

D. Pursuant to development permit application DE 409671 (development permit application DE 409671 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 HA-2 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 118,208 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 118,208 square feet to other development sites, this agreement shall be deemed to be amended accordingly and 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 118,208 square feet of floor area in the manner set out in section 595A of the *Vancouver Charter*. The 118,208 square feet of floor area includes a residual density of 183 square feet.
- (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 Commercial Heritage Properties Incentive Fund ("CHPIF"), Federal Government initiative through Parks Canada or similar grants or any promises for CHPIF 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 CHPIF Grant or similar grant, or the promise of a CHPIF 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 CHPIF 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, upon expiration of the Holdback Period, 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 CHPIF Grants or similar grants. In the event the Owner fails to make such applications in the manner required or fails to use commercially reasonable efforts to obtain CHPIF Grants or similar grants, the City may, in its absolute discretion, up to the maximum amount of the Holdback, reduce the additional development rights provided for in section 2(a) of this agreement. The Owner shall preserve and protect the Heritage Building as would a reasonable and prudent owner.
4. The Owner shall keep the exterior of the Heritage Building in good appearance and in good repair as would a reasonable and prudent owner.
5. The Owner shall keep the structure of the Heritage Building in good repair as would a reasonable and prudent owner.
6. (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.

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

8. 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.

9. 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.

10. 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, if successful, be entitled to court costs on a solicitor and own client basis.

11. 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.

12. 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 12 shall survive the expiration or earlier termination of this agreement.

13. 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 13 shall survive the expiration or earlier termination of this agreement.

14. 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.

15. 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.

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

17. 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:

SALIENT DEVELOPMENTS (FLACK) LTD.
Suite 6, Gaoler's Mews
209 Carrall Street
Vancouver, British Columbia
V6B 4K7

Fax: 604. _____

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 17. 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.

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

19. 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.

20. 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.

21. 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.

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

- (a) this agreement (or notice of this agreement by legal notation) 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.

23. 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 (or notice of this agreement by legal notation) 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;

24. 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:

**SALIENT DEVELOPMENTS (FLACK)
LTD.** by its authorized signatories:

(as to both signatures) 06

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. _____

MEMORANDUM AS TO ENCUMBRANCES, LIENS AND INTERESTS

COOPER PACIFIC MORTGAGE INVESTMENT CORPORATION (the "Chargeholder")
 Holder of MORTGAGE BX368024, ASSIGNMENT OF RENTS BX368025 and NOTICE OF A SECURITY
 INTEREST BX368028 (collectively the "Charges")
 charging Lot F Block 4 Old Granville Townsite New Westminster District Plan BCP24070
 (the "Lands")

For Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and agreed to by the Chargeholder, the Chargeholder, being the holder of the Charge, hereby 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 Charge in the same manner and to the same effect as if the Encumbrance had been granted and registered against title to the Lands prior to the dating, execution and registration of the Charge and the advance of any monies thereunder.

Execution Date

Y M D

Officer:

 (as to both signatures)

Party:

**COOPER PACIFIC MORTGAGE
 INVESTMENT CORPORATION.** by its
 Authorized Signatories:

 Sign & Print Name:

 Sign & Print Name:

06

MEMORANDUM AS TO ENCUMBRANCES, LIENS AND INTERESTS

COOPER PACIFIC II MORTGAGE INVESTMENT CORPORATION (the "Chargeholder")
Holder of MORTGAGE BX368026, ASSIGNMENT OF RENTS BX368027 and NOTICE OF A SECURITY
INTEREST BX368028 (collectively the "Charges")
charging Lot F Block 4 Old Granville Townsite New Westminster District Plan BCP24070
(the "Lands")

For Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and agreed to by the Chargeholder, the Chargeholder, being the holder of the Charge, hereby 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 Charge in the same manner and to the same effect as if the Encumbrance had been granted and registered against title to the Lands prior to the dating, execution and registration of the Charge and the advance of any monies thereunder.

Execution Date
Y M D

Officer:

Party:

COOPER PACIFIC II MORTGAGE INVESTMENT CORPORATION. by its
Authorized Signatories:

(as to both signatures)

06

Sign & Print Name:

Sign & Print Name:

END OF DOCUMENT

EXPLANATION**Heritage Taxation Exemption By-law
re 163 West Hastings Street**

On May 16, 2006, Council approved a heritage taxation exemption for eligible heritage property at 163 West Hastings Street to a value of \$1,948,159.00 or 10 years, whichever first occurs.

Director of Legal Services
July 11, 2006

BY-LAW NO. _____



**Heritage Taxation Exemption By-law
for 163 West Hastings Street**

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

1. Council exempts from real property taxation the eligible heritage property legally described as PID: 026-689-979, Lot F, Block 4, Old Granville Townsite, New Westminster District, Plan BCP24070:

- (a) to a value of \$1,948,159.00, calculated from and after the commencement date; or
- (b) for 10 years, calculated from and after the commencement date;

whichever first occurs.

2. If issuance of an occupancy permit for the heritage rehabilitation work authorized under development application number DE409671 occurs:

- (a) before October 31st, the commencement date will be January 1st of the next calendar year;
- (b) on or after October 31st, the commencement date will be January 1st of the calendar year after the next calendar year.

3. If the applicant for the development permit does not fulfil, or cause to be fulfilled, all requirements necessary to obtain issuance of an occupancy permit for the work authorized pursuant to development application number DE409671 within 60 months after the enactment date of this By-law, this By-law will expire and have no further force or effect.

4. 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 1 West Hastings Street**

After the public hearing on January 24, 2006, Council resolved to enter into a by-law to authorize an agreement with the owner of the property at 1 West Hastings Street pursuant to Section 592 of the Vancouver Charter. The Director of Planning has advised that any prior-to conditions are complete, and enactment of the attached by-law will implement Council's resolution.

Director of Legal Services
July 11, 2006

1 West Hastings 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 1 West Hastings Street, and the following legal descriptions:

PID: 010-963-812, Lot D of Lot 17, Block 3, Old Granville Townsite, Plan 6135

PID: 015-385-566, Lot E of Lot 17, Block 3, Old Granville Townsite, Plan 307

PID: 015-385-591, Lot F of Lot 17, Block 3, Old Granville Townsite, Plan 307

contains a heritage building listed on the Vancouver Heritage Register as a Category A 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.

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

BETWEEN:

0719440 B.C. LTD.
P.O. Box 10424, Pacific Centre
1300 - 777 Dunsmuir Street
Vancouver, British Columbia,
V7Y 1K2

(the "Owner")

OF THE FIRST PART

AND:

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

(the "City")

OF THE SECOND PART

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: 010-963-812 Lot D of Lot 17 Block 3 Old Granville Townsite Plan 6135	and	City of Vancouver Parcel Identifier: 015-385-566 Lot E of Lot 17 Block 3 Old Granville Townsite Plan 307
and	City of Vancouver Parcel Identifier: 015-385-591 Lot F of Lot 17 Block 3 Old Granville Townsite Plan 307		

(collectively the "Lands")

B. The Lands are within the HA-2 District of the City's *Zoning and Development By-law*.

C. The Merchants Bank Building presently situate on the Lands and having the postal address of 1 West Hastings Street is listed in Category “A” in the Vancouver Heritage Register. In this agreement the Merchants Bank Building and each replacement thereof from time to time is herein called the “Heritage Building”.

D. Pursuant to development application DE409320 (development application DE409320 and 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.

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 and as contemplated by this agreement.

2. 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 HA-2 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 54,403 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 54,403 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 54,403 square feet of floor area in the manner set out in section 595A of the *Vancouver Charter*. The additional development rights of 54,403 square feet of floor area assigned to the Lands by this agreement include 4,165 square feet of notional residual density.

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

4. The Owner shall keep the exterior of the Heritage Building in good appearance and in good repair as would a reasonable and prudent owner.

5. The Owner shall keep the structure of the Heritage Building in good repair as would a reasonable and prudent owner.
6. The Heritage Building or any replacement thereof contemplated herein is the only building permitted on the Lands.
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 7 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 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 insure the Heritage Building and its replacements to their full replacement value against all perils including 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. Nothing in this agreement gives express or implied permission to subdivide by way of strata plan and nothing in this agreement precludes subdivision by way of strata plan. If the Owner wishes to subdivide the Lands and the Heritage Building by way of strata plan, the Owner shall apply to the City for such permission in accordance with applicable City policies and procedures.
14. 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.
15. Nothing in this agreement gives the City an interest in the fee of the soil of the Lands or the subdivided parts thereof.
16. This agreement continues in full force and effect until such time, if ever, as it may be lawfully ended.
17. 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, subject to section 13 hereof, 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.

18. 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.

19. If any act of God, accident or other event or factor outside of the control of the Owner delays or renders it impossible or uneconomical for the Owner to perform its obligations in section 1 of this agreement, the Owner's obligations in section 1, together with the Owner's entitlements in this agreement (in particular, but without limitation, those entitlements set out in section 2 of this agreement) shall be suspended accordingly.

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

Execution Date
Y M D

Officer:

Party:

0719440 B.C. LTD. by its authorized signatories:

(as to both signatures) 06

Sign & Print Name:

Sign & Print Name:

CITY OF VANCOUVER by its Authorized Signatory:

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

Frances J. Connell/Graham P. Johnsen

Approved by By-law No. _____

END OF DOCUMENT

EXPLANATION

**Heritage Taxation Exemption By-law
re 1 West Hastings Street**

On January 24, 2006, Council approved a heritage taxation exemption for eligible heritage property at 1 West Hastings Street to a value of \$385,693.00 or 10 years, whichever first occurs.

Director of Legal Services
July 11, 2006

BY-LAW NO. _____

**Heritage Taxation Exemption By-law
for 1 West Hastings Street**

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

1. Council exempts from real property taxation the eligible heritage property legally described as PID: 010-963-812, Lot D of Lot 17, Block 3, Old Granville Townsite, Plan 6135; PID: 015-385-566, Lot E of Lot 17, Block 3, Old Granville Townsite, Plan 307; and PID: 015-385-591, Lot F of Lot 17, Block 3, Old Granville Townsite, Plan 307:

(a) to a value of \$385,693.00, calculated from and after the commencement date;
or

(b) for 10 years, calculated from and after the commencement date;

whichever first occurs.

2. If issuance of an occupancy permit for the heritage rehabilitation work authorized under development application number DE409320 occurs:

(a) before October 31st, the commencement date will be January 1st of the next calendar year;

(b) on or after October 31st, the commencement date will be January 1st of the calendar year after the next calendar year.

3. If the applicant for the development permit does not fulfil, or cause to be fulfilled, all requirements necessary to obtain issuance of an occupancy permit for the work authorized pursuant to development application number DE409320 within 60 months after the enactment date of this By-law, this By-law will expire and have no further force or effect.

4. 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**Parking By-law
Relaxation and Payment-in-Lieu
163 West Hastings Street**

On May 16, 2006, Council approved a recommendation to accept \$87,000.00 in return for the waiver of the requirement to provide six off-street parking spaces at 163 West Hastings Street.

The Director of Finance has verified that the money has been received, and Council may now enact the attached by-law to implement Council's resolution and effect the waiver.

Director of Legal Services
July 11, 2006

163 West Hastings Street

BY-LAW NO. _____

A By-law to amend Parking By-law No. 6059

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

1. To Schedule A of the Parking By-law, Council adds:

PID: 026-689-979	Six off-street parking	\$87,000.00
Lot F	spaces	
Block 4		
Old Granville Townsite		
New Westminster District		
Plan BCP24070		

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