

**EXPLANATION****Authorization to enter into a  
Heritage Revitalization Agreement  
with the owner of 412 Carrall Street**

After the public hearing on July 11, 2006, Council resolved to enter into a by-law to authorize an agreement with the owner of the property at 412 Carrall 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  
March 15, 2007

412 Carrall 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 412 Carrall Street, and the following legal description:

PID: 003-545-725

Lot 1

Block 13

District Lot 196

Plan 184

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 \_\_\_\_\_, 2007

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
City Clerk

THIS AGREEMENT dated for reference the \_\_\_\_ day of \_\_\_\_\_, 2006,

BETWEEN:

**PHS COMMUNITY SERVICES SOCIETY**  
(Incorporation No. S30883),  
20 West Hastings Street,  
Vancouver, British Columbia  
V6B 1G6

(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: 003-545-725  
Lot 1  
Block 13  
District Lot 196  
Plan 184

(the "Lands");

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

C. The Pennsylvania Hotel is presently situate on the Lands and is listed in Category "B" on the Vancouver Heritage Register. In this Agreement the Pennsylvania Hotel and all replacements thereof is collectively the "Heritage Building".

D. Pursuant to development application DE406061 (development application DE406061 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 and the Heritage Building 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 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 89,998 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 89,998 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 89,998 square feet of floor area in the manner set out in section 595A of the *Vancouver Charter*. The 89,998 square feet of floor area includes a residual density of 935 square feet.

3. The Owner shall keep and continue to keep the Heritage Building in good appearance and in good repair as would a reasonable and prudent owner.

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

5. The Owner may not alter the appearance of, renovate, reconfigure, repair 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. Further,

all such alterations, renovations, reconfigurations, repairs and replacements must, to the satisfaction of the City, comply with all City policies with respect to the same.

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 section 5 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 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.

8. 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.

9. 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.

10. 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.

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

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

The indemnity set out in this section 11 shall survive the expiration or earlier termination of this agreement.

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

13. 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.

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. 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:



PHS Community Services Society  
20 West Hastings Street,  
Vancouver, British Columbia  
V6B 1G6  
Fax: 604.683.9371

Attention: Tom Laviolette

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.

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

18. 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.

19. 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.

20. 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.

21. 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.

22. 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 hereof) 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.

23. 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:

PHS COMMUNITY SERVICES SOCIETY  
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 12<sup>th</sup> 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**

**PROVINCIAL RENTAL HOUSING CORPORATION (the "Chargeholder")  
Holder of Covenant BV285243 and Option to Purchase BV28544 (collectively the "Charge")  
charging Lot 1 Block 13 District Lot 196 Plan 184 (the "Lands")**

For Ten Dollar (\$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 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:

06

Party:

**PROVINCIAL RENTAL  
HOUSING CORPORATION by  
its Authorized Signatories:**

\_\_\_\_\_  
sign and print name

\_\_\_\_\_  
sign and print name

**MEMORANDUM AS TO ENCUMBRANCES, LIENS AND INTERESTS**

**BRITISH COLUMBIA HOUSING MANAGEMENT COMMISSION (the "Chargeholder")  
Holder of Mortgage BV285245, Assignment of Rents BV285246 and  
Notice of a Security Interest BV285247 (collectively the "Charge")  
charging Lot 1 Block 13 District Lot 196 Plan 184 (the "Lands")**

For Ten Dollar (\$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 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:

06

Party:

**BRITISH COLUMBIA HOUSING  
MANAGEMENT COMMISSION  
by its Authorized  
Signatories:**

\_\_\_\_\_  
sign and print name

\_\_\_\_\_  
sign and print name

**END OF DOCUMENT**

**EXPLANATION**

**Heritage Taxation Exemption By-law  
re 412 Carrall Street**

On July 11, 2006, Council approved a heritage taxation exemption for eligible heritage property at 412 Carrall Street to a value of \$947,502.00 or 10 years, whichever first occurs.

Director of Legal Services  
March 15, 2007



BY-LAW NO. \_\_\_\_\_

**Heritage Taxation Exemption By-law  
for 412 Carrall 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: 003-545-725, Lot 1, Block 13, District Lot 196, Plan 184:

- (a) to a value of \$947,502.00, 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 DE406061 occurs:

- (a) before October 31<sup>st</sup>, the commencement date will be January 1<sup>st</sup> of the next calendar year;
- (b) on or after October 31<sup>st</sup>, the commencement date will be January 1<sup>st</sup> 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 DE406061 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 \_\_\_\_\_, 2007

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
City Clerk