

**EXPLANATION****A By-law to amend the Zoning and Development By-law  
re miscellaneous text amendments**

After the public hearing on March 11, 2008, Council resolved to amend the Zoning and Development By-law to clarify the use of limited service food establishments. The Director of Planning has advised that there are no prior-to conditions, and enactment of the attached by-law will implement Council's resolution.

Director of Legal Services  
April 1, 2008



Miscellaneous text amendments

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

**A By-law to amend  
Zoning and Development By-law No. 3575**

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

1. In the Zoning and Development By-law, Council in:
  - (a) section 2, from the definition of “Wholesale”, strikes out “as”, and substitutes “at”;
  - (b) section 2, strikes out the definition of “Limited Service Food Establishment” under the definition of “Retail Uses”; and
  - (c) section 3.2.R of each of District Schedules I-2 and M-2, strikes out “Limited Food Service Establishment”, and substitutes:

“Limited Service Food Establishment, which means the use of premises for the primary purpose of selling, or selling and serving, prepared food to the public during all hours of operation, where the premises include not more than 16 indoor or outdoor seats for customers consuming food purchased on the premises, but where customers may also purchase food for take-out, and where live entertainment is not available.”

2. This By-law is to come into force and take effect on the date of its enactment.

ENACTED by Council this \_\_\_\_\_ day of \_\_\_\_\_, 2008

\_\_\_\_\_  
Mayor

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

**EXPLANATION****A By-law to amend the Sign By-law  
re miscellaneous text amendments**

After the public hearing on March 11, 2008, Council resolved to amend the Sign By-law to make miscellaneous text amendments. The Director of Planning has advised that there are no prior-to conditions, and enactment of the attached by-law will implement Council's resolution.

Director of Legal Services  
April 1, 2008

Miscellaneous text amendments

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

**A By-law to amend Sign By-law No. 6510**

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

1. In Schedule E to the Sign By-law, immediately after:

3215 MacDonald Street	CD-1(25)	4076	B (C-1)
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Council inserts:

2105 West 32 <sup>nd</sup> Avenue 4615 - 4675 Arbutus Street	CD-1(26)	4078	B (C-1)
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2. This By-law is to come into force and take effect on the date of its enactment.

ENACTED by Council this \_\_\_\_\_ day of \_\_\_\_\_, 2008

\_\_\_\_\_  
Mayor

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

## EXPLANATION

**A By-law to amend CD-1 By-law No. 9116  
re miscellaneous text amendments**

After the public hearing on March 11, 2008, Council resolved to amend this CD-1 By-law to clarify the parking requirements for the site in order to allow a development to provide parking according to the parking by-law if the site is not fully developed under the existing CD-1 by-law provisions. This would achieve the intent of the original CD-1 By-law. The Director of Planning has advised that there are no prior-to conditions, and enactment of the attached by-law will implement Council's resolution.

Director of Legal Services  
April 1, 2008



Miscellaneous text amendments

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

**A By-law to amend CD-1 By-law No. 9116**

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

1. In section 6 of CD-1 By-law No. 9116, Council, after “except that”, inserts “if development of the site consists of hotel use”.
2. This By-law is to come into force and take effect on the date of its enactment.

ENACTED by Council this \_\_\_\_\_ day of \_\_\_\_\_, 2008

\_\_\_\_\_  
Mayor

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

**EXPLANATION****A By-law to amend CD-1 By-law No. 9588  
re miscellaneous text amendments**

After the public hearing on March 11, 2008, Council resolved to amend this CD-1 By-law to allow the Director of Planning discretion to relax the horizontal angle of daylight. The Director of Planning has advised that there are no prior-to conditions, and enactment of the attached by-law will implement Council's resolution.

Director of Legal Services  
April 1, 2008

Miscellaneous text amendments

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

**A By-law to amend CD-1 By-law No. 9588**

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

1. After section 5.5 of CD-1 By-law No. 9588, Council adds:

“5.6 If:

(a) the Director of Planning or Development Permit Board first considers the intent of this CD-1 By-law and all the applicable policies and guidelines adopted by Council; and

(b) the minimum distance of unobstructed view is not less than 3.7 m;

the Director of Planning or Development Permit Board may relax the horizontal angle of daylight requirement.”

2. This By-law is to come into force and take effect on the date of its enactment.

ENACTED by Council this \_\_\_\_\_ day of \_\_\_\_\_, 2008

\_\_\_\_\_  
Mayor

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



## EXPLANATION

**Vancouver Development Cost Levy By-law  
amending by-law re community energy centres**

Council resolved on March 11, 2008 to amend the Vancouver Development Cost Levy By-law to add a levy for community energy centres, and this by-law implements that resolution.

Director of Legal Services  
April 1, 2008

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

**A By-law to amend  
Vancouver Development Cost Levy By-law No. 8149  
regarding community energy centres**

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

1. This By-law amends the indicated provisions of the Vancouver Development Cost Levy By-law.
2. Council re-numbers subsections (f), (g), (h), (i), and (j) of section 3 as subsections (g), (h), (i), (j), and (k) respectively.
3. After section 3(e), Council adds:  

“(f) community energy centre, being an energy supply facility that provides heat energy in the form of hot water to buildings through a thermal distribution network that links the community energy centre with an energy transfer station in each building, and that includes separate loops for the supply and return of heat energy in the form of hot water, the levy is to be \$10.00 in respect of each building permit,”.
4. This By-law is to come into force and take effect on the date of its enactment.

ENACTED by Council this \_\_\_\_\_ day of \_\_\_\_\_, 2008

\_\_\_\_\_  
Mayor

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

## EXPLANATION

**Area Specific Development Cost Levy By-law  
amending by-law re community energy centres**

Council resolved on March 11, 2008 to amend the Area Specific Development Cost Levy By-law to add a levy for community energy centres in Southeast False Creek, and this by-law implements that resolution.

Director of Legal Services  
April 1, 2008

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

**A By-law to amend  
Area Specific Development Cost Levy By-law No. 9418  
regarding community energy centres**

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

1. In section 3.10 of the Area Specific Development Cost Levy By-law, Council:
  - (a) strikes out “and” from subsection (c);
  - (b) strikes out the period from the end of subsection (d), and substitutes “; and”;  
and
  - (c) after subsection (d), adds:
    - “(e) community energy centre, being an energy supply facility that provides heat energy in the form of hot water to buildings through a thermal distribution network that links the community energy centre with an energy transfer station in each building, and that includes separate loops for the supply and return of heat energy in the form of hot water, the levy is to be \$10.00 in respect of each building permit.”
2. This By-law is to come into force and take effect on the date of its enactment.

ENACTED by Council this \_\_\_\_\_ day of \_\_\_\_\_, 2008

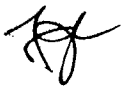
\_\_\_\_\_  
Mayor

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

**EXPLANATION****A By-law to amend CD-1 By-law No. 9454  
re the Olympic Village**

After the public hearing on April 17, 2007, Council resolved to amend this CD-1 By-law regarding height limitation. The Director of Planning has advised that there are no prior-to conditions, and enactment of the attached by-law will implement Council's resolution.

Director of Legal Services  
April 1, 2008



51, 85, 199 and 215 West 1st Avenue  
1599 and 1651 Ontario Street  
1598 and 1650 Columbia Street

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

**A By-law to amend CD-1 By-law No. 9454**

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

1. From section 7.3 of By-law No. 9454, Council strikes out “30.0”, and substitutes “40.5”.
2. This By-law is to come into force and take effect on the date of its enactment.

ENACTED by Council this \_\_\_\_\_ day of \_\_\_\_\_, 2008

\_\_\_\_\_  
Mayor

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

**EXPLANATION****Authorization to enter into a  
Heritage Revitalization Agreement  
with the owner of 801 West Georgia Street**

On April 1, 2008, Council resolved to enter into a by-law to authorize an agreement with the owner of the property at 801 West Georgia Street pursuant to Section 592 of the Vancouver Charter. No public hearing was necessary because the agreement does not affect use or density of use.

Director of Legal Services  
April 1, 2008

801 West Georgia 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 801 West Georgia Street, and the following legal description:

PID: 027-196-267  
Parcel 1  
Block 41  
District Lot 541  
Group 1  
New Westminster District  
Plan BCP32307

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.





LAND TITLE ACT

**FORM C**

(Section 233)

Province of British Columbia

**GENERAL INSTRUMENT - PART 1**

(This area for Land Title Office Use)

Page 1 of 14 pages

1. APPLICATION: (Name, address, phone number and signature of applicant, applicant's solicitor or agent)

\_\_\_\_\_  
Signature of Agent

2. PARCEL IDENTIFIER(S) AND LEGAL DESCRIPTION(S) OF LAND:\*

(PID)

(LEGAL DESCRIPTION)

027-196-267

Parcel 1 Block 41 District Lot 541 Group 1 New  
Westminster District Plan BCP32307

3. NATURE OF INTEREST:\*

DESCRIPTION

DOCUMENT REFERENCE  
(page and paragraph)

PERSON ENTITLED TO  
INTEREST

SEE SCHEDULE

4. TERMS: Part 2 of this instrument consists of (select one only)

- (a) Filed Standard Charge Terms [ ] D.F. No.  
(b) Express Charge Terms [XX] Annexed as Part 2  
(c) Release [ ] There is no Part 2 of this instrument

A selection of (a) includes any additional or modified terms referred to in Item 7 or in a schedule annexed to this instrument. If (c) is selected, the charge described in Item 3 is released or discharge as a charge on the land described in Item 2.

5. TRANSFEROR(S):\*

**HOTEL GEORGIA DEVELOPMENT LTD.** (Inc. No. 0722650), 788 - 1199 West Hastings  
Street, Vancouver, B.C., V6E 3T5  
**HSBC BANK CANADA**, as to Priority

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

**CITY OF VANCOUVER**, 453 West 12th Avenue, Vancouver, B.C., V5Y 1V4

7. ADDITIONAL OR MODIFIED TERMS:\*

N/A

8. EXECUTION(S):\*\* This instrument creates, assigns, modifies, enlarges, discharges or governs the priority of the interest(s) described in Item 3 and the Transferor(s) and every other signatory agree to be bound by this instrument, and acknowledge(s) receipt of a true copy of the filed standard charge terms, if any.

Officer Signature(s)	Execution Date			Party(ies) Signature(s)
	Y	M	D	
_____ (Solicitor)	08			<b>HOTEL GEORGIA DEVELOPMENT LTD.,</b> by its authorized signatories:  Name: _____  Name: _____
_____ (Solicitor)	08			<b>HSBC BANK CANADA,</b> by its authorized signatories:  Name: _____  Name: _____
_____	08			<b>CITY OF VANCOUVER</b> by its authorized signatory:  _____ Frances J. Connell/Graham P. Johnsen

**OFFICER CERTIFICATION:**

Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the Evidence Act, R.S.B.C. 1996, c.124, to take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the Land Title Act as they pertain to the execution of this instrument.

- \* If space insufficient, enter "SEE SCHEDULE" and attach schedule in Form E.
- \*\* If space insufficient, continue executions on additional page(s) in Form D.

LAND TITLE ACT  
FORM E  
SCHEDULE

Enter the Required Information in the Same Order as the Information Must Appear on the Freehold Transfer Form, Mortgage Form or General Document Form.

### 3. NATURE OF INTEREST

DESCRIPTION	DOCUMENT REFERENCE (page and paragraph)	PERSON ENTITLED TO INTEREST
Section 219 Covenant	Pages 6 - 8, Article 2	Transferee
Priority Agreement granting the above Section 219 Covenant priority over Mortgage BX267314 as modified by BB602353 and Assignment of Rents BX267315	Page 14	Transferee
Section 219 Covenant	Pages 8 - 10, Article 3	Transferee
Priority Agreement granting the above Section 219 Covenant priority over Mortgage BX267314 as modified by BB602353 and Assignment of Rents BX267315	Page 14	Transferee
Statutory Right of Way	Page 10, Article 4	Transferee
Priority Agreement granting the above Statutory Right of Way priority over Mortgage BX267314 as modified by BB602353 and Assignment of Rents BX267315	Page 14	Transferee
Equitable Charge	Page 10, Article 5	Transferee
Priority Agreement granting the above Equitable Charge priority over Mortgage BX267314 as modified by BB602353 and Assignment of Rents BX267315	Page 14	Transferee

**TERMS OF INSTRUMENT - PART 2**

**Heritage Revitalization Agreement - 801 West Georgia Street**

**WHEREAS:**

- A. The Owner (as herein defined) is the registered owner of the following lands and premises:
- PID: 027-196-267  
Parcel 1 Block 41  
District Lot 541  
Group 1 New Westminster District  
Plan BCP32307
- (the “Lands”);
- B. The hotel building on the Lands known as the Hotel Georgia with a civic address of 801 West Georgia Street (the “**Heritage Building**”) has been designated, by By-law No. 4837 as amended by By-law No. 7887, in whole as protected heritage property including the interior features listed in By-law No. 7887, notices of which designation were filed in the Land Title Office as Legal Notations BJ91210 and BM148463;
- C. The City and a previous owner of the Heritage Building entered into a heritage revitalization agreement dated for reference the 1<sup>st</sup> day of May, 1998 and an amendment thereof dated the 16<sup>th</sup> day of July, 2002 (together, the “**Previous HRA**”), notices of which were filed in the Land Title Office as Legal Notations BM139118 and BT254468 and, therefore, the Previous HRA is binding on the Owner;
- D. By Development Application No. DE410870, the Owner proposes, inter alia, conservation work related to the Heritage Building exteriors, interiors and seismic upgrading (collectively, the “**Conservation Work**”) including, but not limited to, the work in the heritage conservation plan, as submitted with such Application and to be attached to and form part of the resulting Development Permit, and any amendments to such submitted heritage conservation plan contained in any building permit or heritage alteration permit issued in respect of the Lands (collectively, the “**Heritage Conservation Plan**”);
- E. The Owner also proposed that the Previous HRA and certain related existing charges in favour of the City on the title to the Lands be amended to reflect the Owner’s proposals in and the particulars of Development Application No. DE410870 but the Owner and the City have concluded that it would be more practical to replace the Previous HRA and such charges with a single instrument; and
- F. Accordingly, at the request of the Owner, this Agreement is being entered into as a heritage revitalization agreement pursuant to Section 592 of the *Vancouver Charter*

and including certain registrable charges with respect to the Owner's obligations, to replace the Previous HRA and enable the release of the existing charges referred to in Recital E;

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 passing from the City to the Owner (the receipt and sufficiency of which the Owner hereby acknowledges) and pursuant to Section 592 of the *Vancouver Charter*, the parties agree as follows:

## ARTICLE 1 DEFINITIONS AND INTERPRETATION

1.1 Definitions. The terms defined in this Section 1.1 shall, unless otherwise specifically provided for in this Agreement (as defined below), have the following meanings:

- (a) **"Agreement"** means this instrument and agreement, all land title instruments and forms attached and all schedules, if any, to this instrument and agreement;
- (b) **"City"** means the municipal corporation continued pursuant to the *Vancouver Charter*, and **"City of Vancouver"** means the geographic location;
- (c) **"Conservation Work"** has the respective meaning set out in Recital D;
- (d) **"Consultant"** means the Owner's heritage consultant who shall be a registered architect or professional engineer in good standing and who shall have substantial experience in heritage rehabilitation work;
- (e) **"Development Permit"** means the development permit issued, whether before or after the Effective Date, pursuant to Development Application No. DE410870, and any amendments thereto;
- (f) **"Director of Planning"** means the chief administrator from time to time of the Planning Department of the City and his successors in function and their respective nominees;
- (g) **"Effective Date"** means the date that this Agreement is executed by the City;
- (h) **"Heritage Building"** means the hotel building so defined in Recital B and as designated in whole as protected heritage property including the interior fixtures and features as referred to in Recital B;
- (i) **"Heritage Conservation Plan"** has the respective meaning set out in Recital D;
- (j) **"Land Title Act"** means the *Land Title Act*, R.S.B.C. 1996, c.250, as amended from time to time and any and all replacements thereof or any statute enacted in

substitution thereof and all regulations applicable thereto and any amendments, replacements and substitutions thereof;

- (k) “**Lands**” has the meaning set out in Recital A;
- (l) “**New Tower**” means the forty-seven (47) storey tower the owner intends to construct on the Lands pursuant to Development Application DE410870;
- (m) “**Owner**” means the registered owner of the Lands as of the Effective Date, namely Hotel Georgia Development Ltd. (incorporation number 0722650), and all of its respective assigns, successors and successors in title to the Lands and, if the Lands are subdivided by way of a strata plan, then “**Owner**” includes, without limitation, a strata corporation thereby created;
- (n) “**Rehabilitation**” means the rehabilitation, restoration and other conservation of the Heritage Building in accordance with this Agreement and in accordance with the Development Permit and “**Rehabilitate**” or “**Rehabilitated**” means to do or to have done such rehabilitation, restoration and other conservation; and
- (o) “**Vancouver Charter**” means the *Vancouver Charter* S.B.C. 1953, c.55, as amended or replaced from time to time.

1.2 **Headings.** The division of this Agreement into Articles, Sections and Paragraphs and the insertion of headings is for the convenience of reference only and will not affect the construction or interpretation of this Agreement. The terms “this Agreement”, “hereof”, “hereunder” and similar expressions refer to this Agreement and not to any particular Article or other portion hereof and include any agreement or instrument supplemental or ancillary hereto. Unless something in the subject matter or context is inconsistent therewith, references herein to Recitals, Articles, Sections or Paragraphs are to Recitals, Articles, Sections or Paragraphs of this Agreement.

1.3 **Number.** Words importing the singular number only will include the plural and vice versa, words importing the masculine gender will include the feminine and neuter genders and vice versa and words importing persons will include individuals, partnerships, associations, trusts, unincorporated organizations and corporations and vice versa.

1.4 **Governing Law.** This Agreement will be governed by and construed in accordance with the laws of the Province of British Columbia and the laws of Canada applicable therein.

## ARTICLE 2 REHABILITATION AND USE OF THE HERITAGE BUILDING

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

- (a) the Owner shall, at its sole expense, Rehabilitate the Heritage Building as proposed in Development Application DE410870, to the satisfaction of the Director of Planning, and the Owner shall without limitation:
- (i) plan and implement all Conservation Work in accordance with the Heritage Conservation Plan and the Standards and Guidelines for the Conservation of Historic Places in Canada (as published by Parks Canada);
  - (ii) cause all Conservation Work, including but not limited to the work in the Heritage Conservation Plan, to be supervised pursuant to Section 2.1(b) of this Agreement and to be completed to the satisfaction of the Director of Planning; and
  - (iii) cause all work related to the Spanish Ballroom portion of the Heritage Building to be planned and implemented in accordance with methodology outlined in the Heritage Conservation Plan, unless agreed otherwise in writing by the Director of Planning, and keep the Director of Planning fully informed of any issues which arise in relation to such aspect of the Conservation Work;
- (b) all aspects of the Rehabilitation shall be supervised by the Consultant;
- (c) at all times during the Rehabilitation, the Owner shall, to the satisfaction of the City, secure the Heritage Building from vandalism and occupation by squatters;
- (d) during the Rehabilitation, and in perpetuity thereafter, the Owner shall, to the satisfaction of the City, keep the Heritage Building insured to its full replacement value against all perils, including, without limitation, damage or destruction by earthquake;
- (e) on completion of the Rehabilitation, the Owner shall cause the Consultant to submit to the City a signed statement (in form and contents satisfactory to the Director of Planning) confirming that the Rehabilitation has been fully completed;
- (f) the City shall be under no obligation to issue an occupancy permit for the Heritage Building, the New Tower or any other building or improvements constructed on the Lands (or any part thereof) notwithstanding that all other conditions and City by-law requirements in respect thereof may have been fulfilled, until the Rehabilitation is completed to the satisfaction of the Director of Planning;
- (g) until the Rehabilitation is completed to the satisfaction of the Director of Planning and an occupancy permit has been issued for the Heritage Building as so Rehabilitated:



- (i) neither the Owner nor any other person whatsoever shall suffer, cause or permit the use or occupation of the Heritage Building, the New Tower or any part of either of them;
- (ii) neither the Owner nor any other person whatsoever shall apply for an occupancy permit for the Heritage Building, the New Tower or any part of either of them or take any action, to compel the issuance of any such occupancy permit; and
- (iii) the person that is the registered Owner on the Effective Date shall not transfer all or any of its legal ownership in the Lands without obtaining an express agreement of its successor in title to assume the obligations under this Agreement, which assumption agreement shall include the City as a party and be in a form approved by the City's Director of Legal Services.

### ARTICLE 3 CONTINUING HERITAGE PRESERVATION AND PROTECTION

3.1 Pursuant to Section 219 of the *Land Title Act*, the Owner covenants and agrees with the City, as covenants and agreements running with, charging and binding the Lands, that:

- (a) the Owner shall preserve, protect, maintain and keep in good order the Heritage Building as would a reasonable and prudent owner;
- (b) the Owner shall not, except as may be permitted by this Agreement, the Development Permit, any building permit issued in respect of the Lands or a heritage alteration permit issued by the City, alter the exterior, make structural changes, or renovate or reconfigure the Heritage Building (or any part thereof);
- (c) if the original street facades of the Heritage Building or any replacement thereof are damaged, the following shall apply:
  - (i) they shall be repaired if lawful and economic;
  - (ii) in determining whether it is economic to repair, the parties are to consider only land economic factors including the cost of repair, the cost of the replacement building to be constructed as required by this Agreement, the market value of the Heritage Building after repair, the market value of the replacement building to be constructed as required by this Agreement and that fact that a heritage density bonus was granted by CD-1 By-law No. 8536;
  - (iii) if the parties cannot agree on whether it is economic to repair, such question shall be determined by arbitration pursuant to Section 3.1(d); and

- (iv) if the parties agree or the arbitrator(s) determines that it is uneconomic to repair all or part of the original street facades of the Heritage Building or any replacement thereof, the provisions of Section 3.1(d)(ii) below for replacement thereof shall apply;
- (d) if the Heritage Building or any replacement thereof is destroyed:
- (i) the Owner shall only be permitted to build a building of similar massing, height and proportions and in substantially the same location on the Lands;
  - (ii) the exterior façades of the new building shall be a reasonable facsimile of the Heritage Building including the spirit of the detail using modern materials; and
  - (iii) the Owner shall not be required to replicate the interior features of the Heritage Building;
- (e) all disputes arising from Section 3.1(c) or (d) shall be determined by arbitration as follows:
- (i) 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;
  - (ii) decisions will be made by the majority of the arbitrators;
  - (iii) 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 it or 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;
  - (iv) 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; and

- (v) except as to matters otherwise provided herein, the provisions of the *Commercial Arbitration Act* (British Columbia), as amended or re-enacted from time to time, shall apply;
- (f) the Owner shall permit all members of the public access to those public interior spaces listed in the City's Heritage By-law for interpretative purposes on one day in each calendar year, which day shall be a day agreed upon by the Owner and the Director of Planning acting reasonably and shall be a day when at the time of agreement the private rooms (being the Spanish Ballroom, Tudor Room and York Room) are not reserved for third party use; and
- (g) the City may, at its cost, affix a commemorative plaque to the Heritage Building and the Owner shall refrain from obscuring, defacing or removing same.

#### ARTICLE 4 STATUTORY RIGHT OF WAY

4.1 Pursuant to Section 218 of the *Land Title Act*, the Owner hereby grants to the City a statutory right of way to enter and be upon the Lands, and in the event that the Owner is in default of any of its obligations under this Agreement, to undertake and diligently prosecute to conclusion the Rehabilitation, and to preserve, protect, maintain, repair and/or replace the Heritage Building, if the City should at any time choose to do so; provided, however, that nothing herein obligates the City to conduct the Rehabilitation, or any part thereof, or to preserve, protect, maintain, repair and/or replace the Heritage Building.

4.2 In the event that the City enters upon the Lands to conduct all, or any part, of the Rehabilitation, or any other work contemplated by Section 4.1:

- (a) there shall be no express or implied warranties as to the quality of the Rehabilitation, or any other work contemplated by Section 4.1, or the suitability of the materials for the purposes for which they are put; and
- (b) the Owner shall pay to the City the costs incurred by the City in undertaking the Rehabilitation or any part thereof, and any other work contemplated by Section 4.1, plus the City's normal overhead charge (not to exceed twenty percent (20%) of such costs) as fair compensation for the City's administrative costs.

The statutory right of way set out in this Article 4 is necessary for the operation and maintenance of the City's undertaking.

**ARTICLE 5  
EQUITABLE CHARGE**

5.1 The Owner grants to the City an equitable charge over the Lands, which charge will run with, charge and bind the Lands, for the payment of all sums (including all interest thereon) which may at any time be payable by the Owner to the City under the terms of this Agreement or otherwise at law and the provisions of this Article 5 shall survive any termination of this Agreement and continue to apply. This equitable charge may be enforced by the appointment of a receiver for the sale of the Lands.

**ARTICLE 6  
RELEASE AND INDEMNITY**

6.1 The Owner hereby releases, indemnifies and saves harmless the City and its officials, councillors, employees, contractors, agents and licensees (each, a “City Party” for the purposes of this Section 6.1), 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 (i) which the City or a City Party may suffer or incur, in the case of the indemnity contained herein, and (ii) which the Owner or its directors, officers, employees, contractors, agents or licencees may suffer or incur, in the case of the release contained herein, in each case, arising out of or in any way connected with:

- (a) this Agreement;
- (b) the City conducting all or any portion of the Rehabilitation or any other work contemplated by this Agreement;
- (c) the City withholding any permits (including, without limitation, an occupancy permit) under this Agreement, until the Owner has fully complied with all requirements of the City in this Agreement and otherwise applicable to the Lands;
- (d) any release of this Agreement or the loss of any of the rights granted hereunder;
- (e) the non-compliance, if any, of the Lands, the Heritage Building or any part of either thereof with any City by-law; and
- (f) issuance of any Development Permit in respect of the Lands.

The releases and indemnities set out in this Article 6 shall survive the expiration or earlier termination of this Agreement and shall survive any modification, release or partial release of any of the covenants created by this Agreement. The releases and indemnities in this Article 6 will be both personal covenants of the Owner and integral parts of the Section 219 covenants granted hereby.

6.2 Without limiting the generality of Section 6.1, the Owner hereby acknowledges and agrees that:

- (a) pursuant to the Previous HRA, a previous owner of the Lands agreed to full and fair compensation for, inter alia, any reduction in the market value of the Lands and/or its improvements caused by the Council of the City enacting the heritage designation by-laws concerning the Lands and its improvements which are noted on the title to the Lands under numbers BJ91210 and BM148463 and waived and renounced all claims for further or other compensation by reason of the enactment of such heritage designation by-laws; and
- (b) by virtue of becoming bound by the Previous HRA, the Owner became bound by such agreement to full and fair compensation and such waiver and renouncement;

and, for greater certainty, the Owner hereby waives and renounces all claims for compensation by reason of this Agreement or the enactment of such heritage designation by-laws.

## ARTICLE 7 GENERAL

7.1 If the registered owner of the Lands shall be more than one party, such parties shall be jointly and severally liable to the City for the performance and observance of the Owner's obligations in this Agreement.

7.2 The Owner shall, after execution of this Agreement, do or cause to be done, at its own cost and expense, all things and acts necessary to ensure that this Agreement is registered against title to the Lands with priority over all other financial encumbrances except financial encumbrances in favour of the City.

7.3 In any action to enforce this Agreement the City shall be entitled to court costs on a solicitor and own client basis. In addition to any other rights the City may have pursuant to this Agreement or at law or in equity, the City may enforce this Agreement by mandatory and prohibitory injunctions.

7.4 If the Land Title Office refuses to register this Agreement, the Owner agrees to modify or re-execute this Agreement so as to permit registration.

7.5 This Agreement shall enure to the benefit of and be binding upon the Owner and its successors and trustees and this Agreement shall charge and run with the Lands and shall enure to the benefit of and be binding upon the Owner's successors in title and their respective trustees and successors and all parties claiming through such owners.

7.6 Without limiting the generality of Section 7.5 but subject to Section 7.7, if the Lands, or any portion thereof, are subdivided by way of a strata plan and the Heritage Building or any part thereof is located within the 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 owners; and
- (c) the liability of each strata lot owner for the performance and observance of the Owner's covenants and obligations in this Agreement shall be in proportion to the unit entitlement of his, her 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, subject to the *Strata Property Act* (British Columbia) and the by-laws of the strata corporation.

7.7 If the Heritage Building is subdivided out of the Lands by way of an air space parcel or conventional building subdivision, provided always that an occupancy permit has first been issued for the Heritage Building and the Rehabilitation has been completed to the satisfaction of the City, the City will, within a reasonable time of being requested to do so by the Owner and at the Owner's expense, release and discharge this Agreement from title to that portion of the subdivided Lands in which no part of the Heritage Building is located.

7.8 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.

7.9 For greater certainty:

- (a) this Agreement is being executed to replace the Previous HRA, which is hereby deemed to be of no further force or effect; and
- (b) this Agreement does not, and shall not be construed to permit a change to the use or density of use that is not otherwise authorized by the applicable zoning of the lands, that being the zoning by way of CD-1 by-law No. 8536.

IN WITNESS WHEREOF the Owner and the City have executed this Agreement on Form C which is a part hereof.

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

**HSBC BANK CANADA (the "Chargeholder")  
HOLDER OF MORTGAGE BX267314 as modified by BB602353 AND  
ASSIGNMENT OF RENTS BX267315 (collectively, the "Charges")  
charging Parcel 1 Block 41 District Lot 541 Group 1 New Westminster District Plan BCP32307  
(the "Lands")**

For One Dollar (\$1.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and agreed to by the Chargeholder, the Chargeholder, being the holder of the Charges, hereby approves and consents to the Section 219 Covenants, Statutory Right of Way and Equitable Charge (collectively, the "Encumbrances") attached, and consents and agrees that the Encumbrances shall be binding upon the Chargeholder's interest in or charges upon the Lands and shall be encumbrances upon the Lands in priority to the Charges in the same manner and to the same effect as if the Encumbrances had been granted and registered against title to the Lands prior to the dating, execution and registration of the Charges and the advance of any monies thereunder.

IN WITNESS WHEREOF the Chargeholder has executed this priority agreement on Form C which is part hereof.

**END OF DOCUMENT**