

**EXPLANATION****Fire By-law amending by-law  
re family fireworks permitting**

The attached by-law will implement Council's resolution of July 24, 2008 to amend the Fire By-law to regulate by permit the purchase and discharge of fireworks.

Director of Legal Services  
September 16, 2008



**A By-law to amend Fire By-law No. 8191  
regarding family fireworks permitting**

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

1. This By-law amends the indicated provisions and schedules of the Fire By-law.
2. In Article 1.2.1.2., Council:
  - (a) after the definition of "*Dangerous goods*", adds:

*"Discharge fireworks or Discharge of fireworks means to discharge, ignite, explode, set off, or detonate fireworks."*; and
  - (b) after the definition of "*Family fireworks*", adds:

*"Family fireworks permit means a permit issued under Sentence 5.8.2.3.(6).  
Family fireworks permit holder means a person who holds a current family fireworks permit."*
3. Council repeals Article 5.8.2.3., and substitutes:

**"5.8.2.3. Family Fireworks**

  - 1) A person must not offer for sale, sell, or dispose of:
    - a) *firecrackers, bottle rockets, or roman candles, or*
    - b) *family fireworks, other than firecrackers, bottle rockets or roman candles, to any person except a family fireworks permit holder and except during the period from and including October 25<sup>th</sup> to and including October 31<sup>st</sup>.*
  - 2) A person who sells or disposes of *family fireworks* to a *family fireworks permit holder* must
    - a) at the time of the sale or disposition, examine the *family fireworks permit holder's family fireworks permit* to ensure that it is current,
    - b) require the *family fireworks permit holder* to produce two pieces of identification that corroborate the name of the *family fireworks permit holder* on the *family fireworks permit*, and examine such identification to corroborate such name, and
    - c) comply with all conditions on the *family fireworks permit* that apply to the sale or disposition of *family fireworks*.

3) A person must not possess or discharge *family fireworks* except if that person is a *family fireworks permit holder*, and complies with the requirements of this By-law and all conditions on the *family fireworks permit*.

4) A person who is at least 19 years of age may apply to the *Fire Chief* for a *family fireworks permit to discharge family fireworks*, and must

a) submit to the *Fire Chief* a completed *family fireworks permit* application in the form prescribed by the *Fire Chief* which includes details of the two pieces of identification referred to in Clause 5.8.2.3.(2)(b),

b) answer correctly 100% the questions posed on a quiz, prepared by the *Fire Chief*, about the safe handling of *family fireworks*,

c) if the discharge of *family fireworks* under the *family fireworks permit* is to occur on property not owned by the applicant, an authorization signed by the property owner or property owner's agent, and

d) such other information or material as this By-law or the *Fire Chief* may require.

5) If

a) the applicant fails to comply with the requirements of Sentence (4),

b) the applicant provides false or inaccurate information on the application for the *family fireworks permit*,

c) the applicant fails the quiz referred to in Clause 4(b),

d) the *Fire Chief* does not approve the proposed location for the *discharge of fireworks*, or

e) this By-law otherwise authorizes the *Fire Chief* to refuse to issue a *permit*,

the *Fire Chief* may refuse to issue the *family fireworks permit* applied for under Sentence (4).

6) The *Fire Chief* may issue a *family fireworks permit*, and may impose conditions on that *family fireworks permit* including the following

a) the location at which the *discharge of fireworks* under the *family fireworks permit* may take place,

b) the days and times the discharge of *family fireworks* may occur at that location,

- c) the fire safety precautions the *family fireworks permit holder* must take in connection with the *discharge of fireworks* under the *family fireworks permit*, and
  - d) safe storage of the *family fireworks* that the *family fireworks permit holder* intends to *discharge* under the *family fireworks permit*.
- 7) A *family fireworks permit holder* must not possess
- a) *firecrackers, bottle rockets, or roman candles, or*
  - b) *family fireworks, other than firecrackers, bottle rockets or roman candles, except during the period from and including October 25<sup>th</sup> to and including October 31<sup>st</sup>.*
- 8) A *family fireworks permit holder* must not discharge
- a) *firecrackers, bottle rockets, or roman candles, or*
  - b) *family fireworks, other than firecrackers, bottle rockets or roman candles, except on October 31<sup>st</sup> or October 30<sup>th</sup>, if October 31<sup>st</sup> falls on a Sunday.*
- 9) If
- a) a *family fireworks permit holder* violates any applicable law or any condition of the *family fireworks permit*,
  - b) a *family fireworks permit holder* acts in such a manner as to endanger property or public safety,
  - c) environmental or weather conditions are such that the *discharge of fireworks* under the *family fireworks permit* would endanger property or public safety, or
  - d) this By-law otherwise authorizes the *Fire Chief* to revoke a *permit*,
- the *Fire Chief* may revoke the *family fireworks permit*.
- 10) A *family fireworks permit* is
- a) valid only for the *discharge of fireworks* at the location and during the days and times specified in the *family fireworks permit*, and
  - b) not transferable.
- 11) The *Fire Chief* may establish an Internet site for use by applicants for a *family fireworks discharge permit* which may include submission of the application, taking of the test, and issuance of the permit.

12) Despite anything to the contrary in this By-law, a person must not offer for sale, sell, dispose of, possess, or discharge family fireworks that produce noise without an accompanying light display that consists of more than a single flash of light.”

4. In the third column of section 4 of Schedule A-1, Council strikes out the existing fee, and substitutes a fee of \$250.00.

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

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

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Mayor

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City Clerk

**EXPLANATION****Noise Control By-law amending by-law  
re 311 West 2<sup>nd</sup> Avenue**

This amendment, approved by Council on July 18, 2006, adds 311 West 2<sup>nd</sup> Avenue to the Noise Control By-law.

Director of Legal Services  
September 16, 2008



## EXPLANATION

### **Vancouver City Planning Commission By-law amending by-law re membership**

The attached by-law will implement Council's resolution of June 24, 2008 to amend the Vancouver City Planning Commission By-law to remove the Board of Parks and Recreation and Board of School Trustees for School District No. 39 as voting members of the Commission.

Director of Legal Services  
September 16, 2008



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



**A By-law to amend Vancouver City Planning  
Commission By-law No. 5064 regarding membership**

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

1. In section 2 of the Vancouver City Planning Commission By-law No. 5064, Council:
  - (a) repeals subsections (d) and (e);
  - (b) from each of subsections (f) and (g), strikes out “(e)”, and substitutes “(c)”; and
  - (c) re-letters each of subsections (f) and (g) as (d) and (e) respectively.
2. From section 6(2), Council strikes out “(except for the two specified Council members)”.
3. 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****2008 Boundary Road Maintenance Agreement By-law**

The attached by-law will implement Council's resolution of June 24, 2008 to enter into an agreement with the City of Burnaby concerning the continuing maintenance of Boundary road.

Director of Legal Services  
September 16, 2008

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



**A By-law to authorize the Boundary Road maintenance agreement  
between City of Vancouver and City of Burnaby**

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

1. Council approves the agreement between the City of Vancouver and City of Burnaby relating to the maintenance of Boundary Road, a copy of which agreement is attached to and forms part of this By-law.
2. Council repeals By-law No. 8739.
3. 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

## BOUNDARY ROAD MAINTENANCE AGREEMENT

THIS AGREEMENT made to be effective as of July 1, 2008.

BETWEEN:

**CITY OF VANCOUVER**, a municipal corporation,  
having offices at 453 West 12th Avenue,  
in the City of Vancouver,  
in the Province of British Columbia,  
V5Y 1V4

(hereinafter called "Vancouver")

OF THE FIRST PART

AND:

**CITY OF BURNABY**,  
4949 Canada Way, in the Municipality of  
Burnaby, Province of British Columbia.  
V5G 1M2

(hereinafter called "Burnaby")

OF THE SECOND PART

WHEREAS:

- A. Boundary Road (as hereinafter defined) straddles the legal boundary between Vancouver and Burnaby;
- B. The legal boundary line between Vancouver and Burnaby is variable and is not consistently at the Agreed Boundary (as hereinafter defined) of Boundary Road;
- C. Vancouver and Burnaby wish to continue sharing responsibility for the maintenance of Boundary Road and have agreed to enter into this Agreement to better define each party's responsibilities regarding the maintenance of Boundary Road; and
- D. This Agreement will serve to continue the parties' previous agreements to share the costs and maintenance responsibilities for Boundary Road, pursuant to an agreement dated January 1, 1998 and which was extended to June 30, 2003 and then further extended by an extension agreement from July 1, 2003 to June 30, 2008.

NOW THEREFORE WITNESSETH that in consideration of the covenants and agreements contained herein, the sum of Five (\$5.00) Dollars (the receipt and

#113330v1

City of Burnaby  
Boundary Road Maintenance Agreement

sufficiency whereof is hereby acknowledged by the parties) the parties hereto covenant and agree as follows:

1. The following terms shall have the meaning hereinafter specified and the definitions given herein shall be applicable to the singular, plural and possessive for the terms defined:

- (a) "Agreed Boundary" means the following:
  - (i) the north/south centre line connecting the midpoints between the curbs or edges of the median for the divided roadway portion of Boundary Road;
  - (ii) the north/south yellow painted traffic line for the portion of Boundary Road which is not divided by a raised median;
  - (iii) the north/south line connecting the midpoints between the edges of the roadway surface for the undivided and unmarked portion of Boundary Road; and
  - (iv) the north/south lines across each of the intersections of Boundary Road connecting the end points of the centre lines and the yellow painted traffic lines defined above; except for the six (6) areas listed below where the Agreed Boundary shall be located as indicated in Schedules "A", "B", "C", "D", "E" and "F" attached hereto which schedules and corresponding Agreed Boundary shall be subject to change from time to time hereafter to reflect changes made to the geometry of the intersections:
    - Adanac Street, Price Street, Regent Street, Canada Way,  
Schou Street, Boundary Road south of Kent Avenue South;
- (b) "Boundary Road" means that portion of the street known as Boundary Road between Fellowes Street on the north and the Fraser River on the south;
- (c) "Maintenance" means the maintaining of the various facilities to a standard equivalent to the standard that existed at the date of this Agreement including but not limited to all surface repairs, inspections necessary, snow removal and street cleaning, landscaping, grass cutting and litter cleanup, but does not include the complete or substantial replacement of any of the facilities covered by this Agreement;
- (d) "Shared Facilities" means:
  - (i) surfaces of the medians and traffic islands which straddle the Agreed Boundary, including but not limited to: grass, sidewalks, hard surfaces and trees;

- (ii) yellow painted traffic line of the portion of Boundary Road which is not divided by a raised median;
  - (iii) pedestrian and vehicle overpasses;
  - (iv) traffic and pedestrian signals, controllers and wiring;
  - (v) street lighting that connects from Vancouver to Burnaby;
- (e) "Non Shared Facilities" means the following:
- (i) pavement structures, curb and gutter and related drain tile and catch basin leads; and
  - (ii) other facilities including signs, painted pavement markings, boulevard landscaping, fences, guard rails, retaining walls and sidewalks with the exception of sidewalks and hard surfaces on the medians and traffic islands straddling the Agreed Boundary; and
- (f) "Street Lighting" means street lighting poles, luminaries, conduits, service panels and all wiring.

2. The term of the Agreement shall commence on July 1, 2008 and shall continue in full force and effect until June 30, 2013 (the Term) unless extended by further agreement of the parties.

3. Vancouver and Burnaby agree that either party may terminate this Agreement upon giving the other party six (6) months written notice of such termination at any time during the Term or any renewal thereof and no compensation shall be payable by either party on account of such termination. Notwithstanding the above, any amounts payable by either party to the other as a result of or incidental to any Maintenance work done prior to the effective date of the termination shall continue to be due and owing and shall survive the early termination of this Agreement

4. Vancouver and Burnaby agree that the Agreed Boundary will be the dividing line between Vancouver and Burnaby for maintenance purposes. The Maintenance of the Non Shared Facilities east of the Agreed Boundary shall be the responsibility of Burnaby and the maintenance of the Non Shared Facilities west of the Agreed Boundary shall be the responsibility of Vancouver. Provided however, if the Maintenance of the Non Shared Facilities can be more expediently carried out by the adjoining municipality then the parties hereto may agree to permit the other to carry out such Maintenance and shall invoice the other party at a cost to be agreed upon.

5. Vancouver and Burnaby agree that the responsibility for the Maintenance of the following Shared Facilities shall be as follows:

- (a) surfaces of medians and traffic islands which straddle the Agreed Boundary including grass, sidewalks, hard surfaces and trees within these medians and traffic islands: Burnaby shall be responsible for the Maintenance south of the centre line of the Lougheed Highway and Vancouver shall be responsible for the Maintenance north of the centre line of the Lougheed Highway;
- (b) the yellow painted traffic line of the portion of Boundary Road which is not divided by raised medians shall be the responsibility of Vancouver;
- (c) the pedestrian and vehicle overpasses on Boundary Road shall be the responsibility of Vancouver;
- (d) traffic and pedestrian signal plant on Boundary Road shall be the responsibility of Vancouver; and
- (e) the Street Lighting on Boundary Road:
  - (i) Vancouver shall be responsible for Maintenance of the Street Lighting from 29th Avenue to Price Street and from Kingsway to Kent Avenue South on both sides of the Agreed Boundary; and
  - (ii) the remainder of the Street Lighting shall be the sole responsibility of the municipality on which side of the Agreed Boundary that the Street Lighting is located on.

6. Vancouver and Burnaby agree to share equally the Maintenance costs of the Shared Facilities as set out in paragraphs 5, (b), (c), (d) and (e)(i). The party responsible for any particular Maintenance, in accordance with paragraph 5 (defined herein as the **Billing Party**), shall have the right to demand payment and to invoice the other party for fifty (50%) percent of such Maintenance costs incurred, itemized by the type of work performed, and calculated by including the following charges:

- (a) labour based on wage rates plus fringe benefits for time spent upon the Maintenance;
- (b) material and equipment used in the Maintenance;
- (c) energy costs for the traffic signals and shared Street Lighting;
- (d) normal overhead charges which shall be calculated at fifteen (15%) percent of the total of paragraph 6 (a), (b) and (c); and
- (e) all applicable taxes including any Goods and Services Taxes payable.

Notwithstanding the foregoing, Vancouver or Burnaby, in the sole discretion of the respective Billing Party, may, in the alternative to calculating the Maintenance costs on the basis of paragraphs 6(a) to 6(e), inclusive, in respect of the Street Lighting

located only on Boundary Road, invoice the other party for work done, Maintenance costs incurred and any other expenses related to Street Lighting on Boundary Road on the basis of a Standard Maintenance Unit Cost plus all applicable taxes, including GST. For purposes of this Agreement the Standard Maintenance Unit Cost shall be calculated by the Billing Party using a cost averaging formula whereby the Standard Maintenance Unit Cost is equal to the total Maintenance costs incurred by either Vancouver or Burnaby, respectively, with respect to all Street Lighting in their respective city divided by the number of Street Lights in the respective city. This Standard Maintenance Unit Cost will then be multiplied by the number of street lights on Boundary Road being maintained by the respective Billing Party. Vancouver and Burnaby agree that in billing or invoicing the other party on the basis of the Standard Maintenance Unit Cost such invoices shall be subject to the party being invoiced having the right to verify or to have the Billing Party verify the actual costs incurred by the Billing Party in carrying out similar work related to their Street Lighting located other than on Boundary Road.

7. The completion and cost of the Maintenance of any of the Non Shared Facilities that straddle the Agreed Boundary will be negotiated between Vancouver and Burnaby on a case by case basis.

8. Vancouver and Burnaby agree that the responsibility and liability for the design of Boundary Road shall be shared equally between Vancouver and Burnaby.

9. Vancouver and Burnaby hereby grant each to the other, its respective contractors, subcontractors, employees, agents and officials the right to enter, labour, pass, repass, work and be in, on, under and over the other's property on Boundary Road with or without vehicles, tools, supplies, materials and equipment and supplies for any purpose connected with the performance by each of them of Maintenance services referred to in this Agreement.

10. Vancouver covenants and agrees with Burnaby that in the event that Vancouver's contractors or subcontractors, employees or agents shall cause damage to Burnaby's property during the carrying out of any Maintenance pursuant to this Agreement and does not forthwith repair, Burnaby may complete such repairs as necessary and Vancouver shall make payment for all such repair and cost of Burnaby forthwith upon receipt of an invoice.

11. Burnaby covenants and agrees with Vancouver that in the event that Burnaby's contractors or subcontractors, employees or agents shall cause damage to Vancouver's property during the carrying out of any Maintenance pursuant to this Agreement and does not forthwith repair, Vancouver may complete such repairs as necessary and Burnaby shall make payment for all such repair and cost of Vancouver forthwith upon receipt of an invoice.

12. Burnaby shall indemnify and hold harmless Vancouver and its officers, officials, employees, contractors, subcontractors, licensees and agents (the Vancouver Personnel) from and against all losses, damages, debts, costs, expenses, actions, causes of action, claims, demands and judgments (collectively referred to in this paragraph 12 as "Losses") suffered or incurred by Vancouver or any Vancouver



Personnel, or made or instituted by any person against Vancouver or any Vancouver Personnel, in any way connected with this Agreement for the failure of Burnaby to carry out the Maintenance obligation set out herein or any Losses caused by the negligent performance by Burnaby of its Maintenance obligations pursuant to this Agreement. This indemnity survives the termination of this Agreement.

13. Vancouver shall indemnify and hold harmless Burnaby and its officers, officials, employees, contractors, subcontractors, licensees and agents (the <sup>A</sup>Burnaby Personnel<sup>@</sup>) from and against all losses, damages, debts, costs, expenses, actions, causes of action, claims, demands and judgments (collectively referred to in this paragraph 13 as "Losses") suffered or incurred by Burnaby or any Burnaby Personnel, or made or instituted by any person against Burnaby or any Burnaby Personnel, in any way connected with this Agreement for the failure of Vancouver to carry out the Maintenance obligation set out herein or any Losses caused by the negligent performance by Vancouver of its Maintenance obligations pursuant to this Agreement. This indemnity survives the termination of this Agreement.

14. Any notice, approval or request given under this Agreement may be well and adequately given if served personally upon any officer of the party for whom it is intended or mailed by prepaid registered mail from any post office in British Columbia and in the case of Vancouver addressed to it at:

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

with a copy to:

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

and in the case of Burnaby addressed to it at:

City Clerk  
City of Burnaby  
4949 Canada Way  
Burnaby, British Columbia  
V5G 1M2

or at such other address as the parties may from time to time advise by notice in writing. The date of receipt of any such notice, approval or request shall be deemed to be the date of delivery of such notice, approval or request if served personally or, on the third business day next following the date of such mailing if mailed as aforesaid, provided that if mailed should there be, between mailing and the actual receipt of

such notice, approval or request, a mail strike, slowdown or other labour dispute which might affect the delivery of such notice, approval or request, such notice, approval or request shall only be affected if actually delivered.

15. If any portion of any section of this Agreement or if any section of this Agreement is declared by a court of competent jurisdiction to be void or unenforceable then that portion of that section or that section shall be severed from the balance of this Agreement and the balance of this Agreement shall survive and be enforceable.

16. The parties hereto shall do such things and execute such documents and in such form necessary in order to perfect the intention of this Agreement.

17. Neither party to this Agreement may assign this Agreement nor any of its rights hereunder without the prior written consent of the other, which consent may be arbitrarily withheld.

18. The failure of either of the parties hereto to insist upon performance of any covenant or condition contained in this Agreement or to exercise any right or option hereunder shall not be construed or operate as a waiver or relinquishment for the future of any such covenant, condition, right or option and no waiver shall be inferred from or implied by anything done or admitted to be done by either of the parties hereto save an expressed waiver in writing.

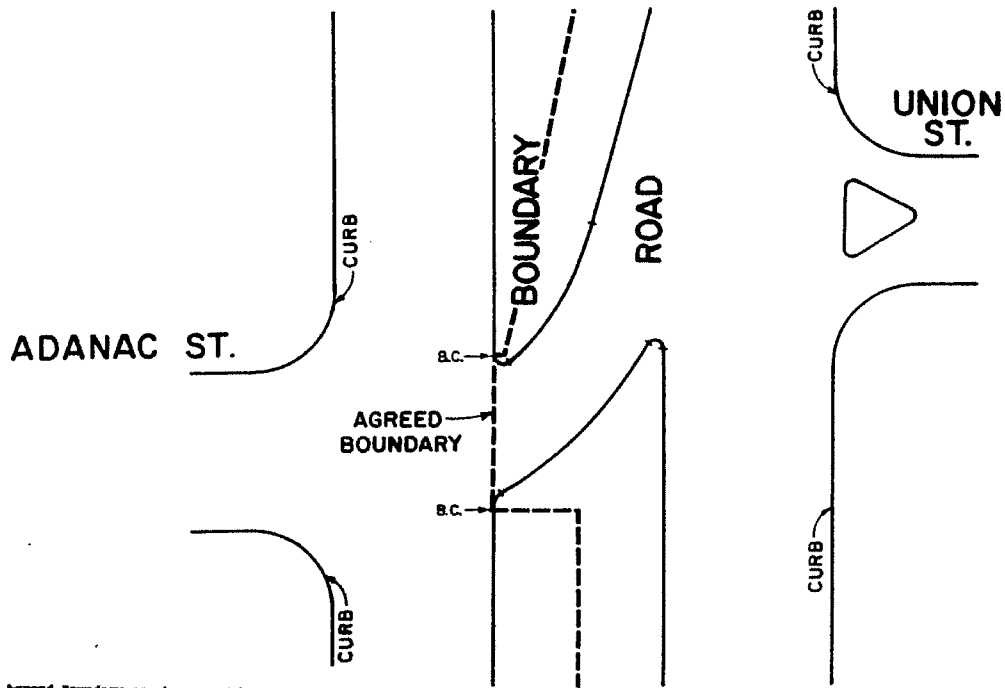
19. This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective successors, administrators and assigns.

IN WITNESS WHEREOF the parties hereto have hereunto caused their respective seals to be affixed under the hands of their proper officers duly authorized in that behalf as of the day and year first above written.

The Common Seal of the )  
 CITY OF VANCOUVER )  
 was hereunto affixed )  
 in the presence of: ) C/S  
 )  
 \_\_\_\_\_ )  
 Authorized Signatory )

The Common Seal of the )  
 CITY OF BURNABY )  
 was hereunto affixed )  
 in the presence of: )  
 ) C/S  
 \_\_\_\_\_ )  
 Authorized Signatory )  
 \_\_\_\_\_ )  
 Authorized Signatory )

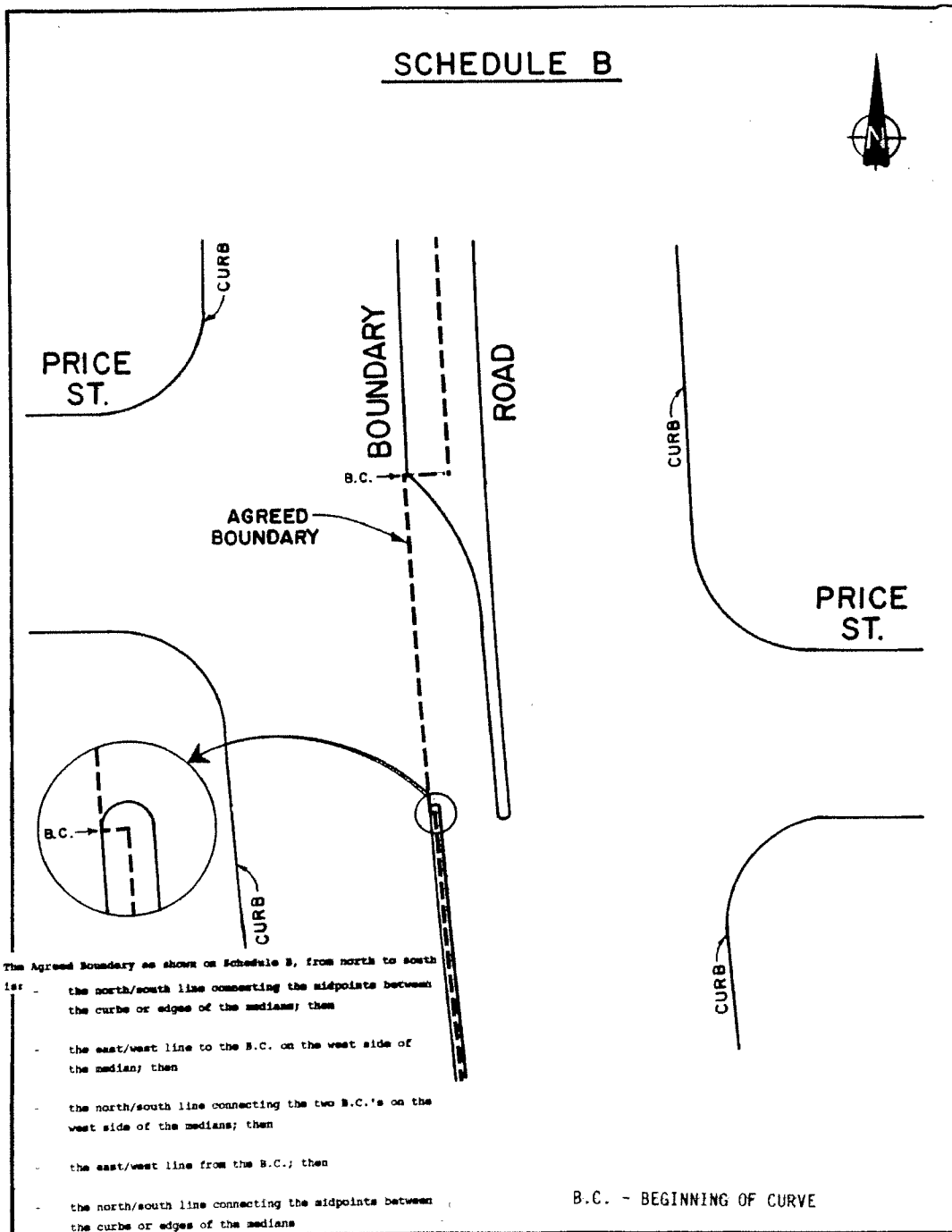
SCHEDULE A



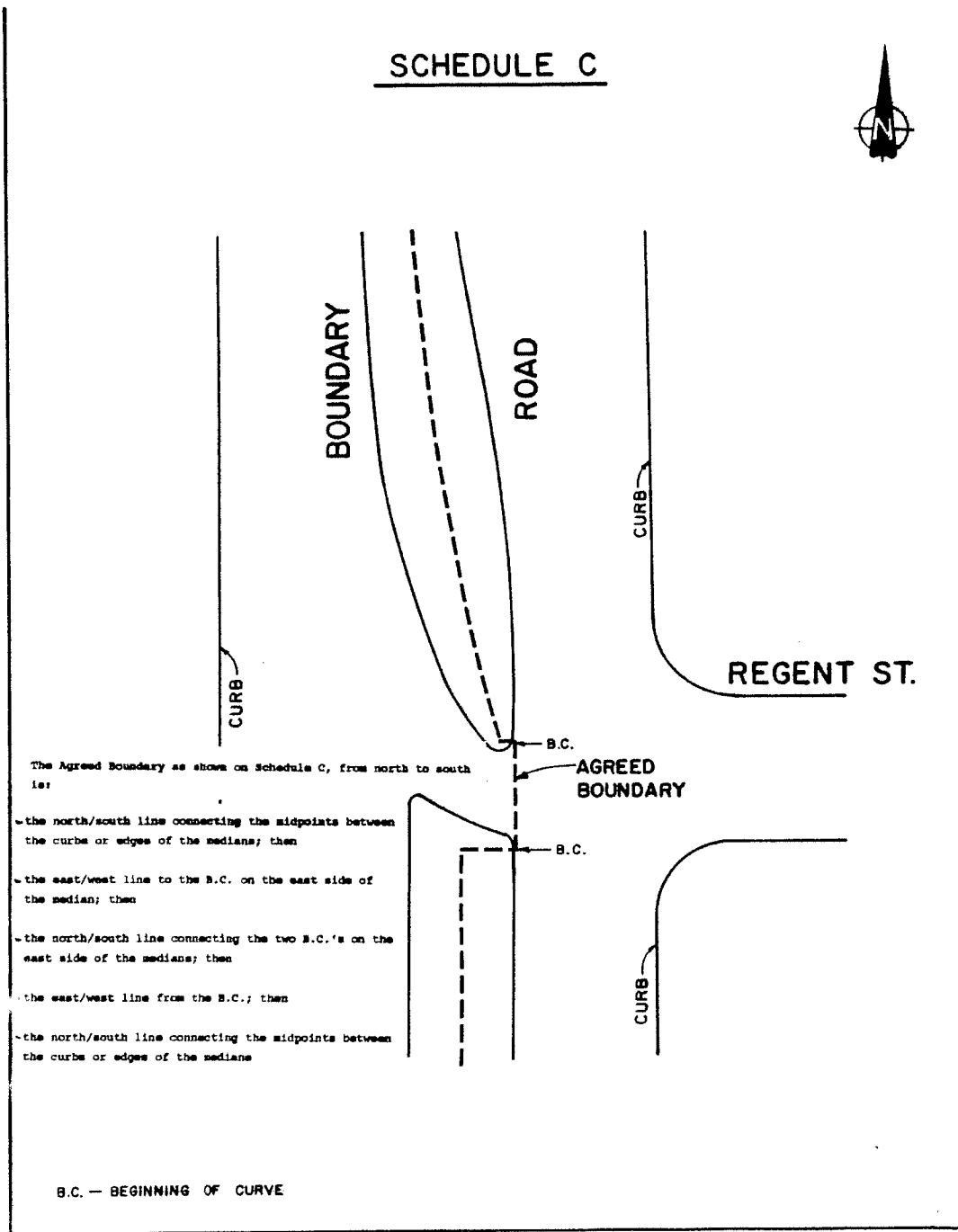
The Agreed Boundary as shown on Schedule A, from north to south is:

- the north/south line connecting the midpoints between the curbs or edges of the medians; then
- the east/west line to the B.C. on the west side of the median; then
- the north/south line connecting the two B.C.'s on the west side of the medians; then
- the east/west line from the B.C.; then
- the north/south line connecting the midpoints between the curbs or edges of the medians

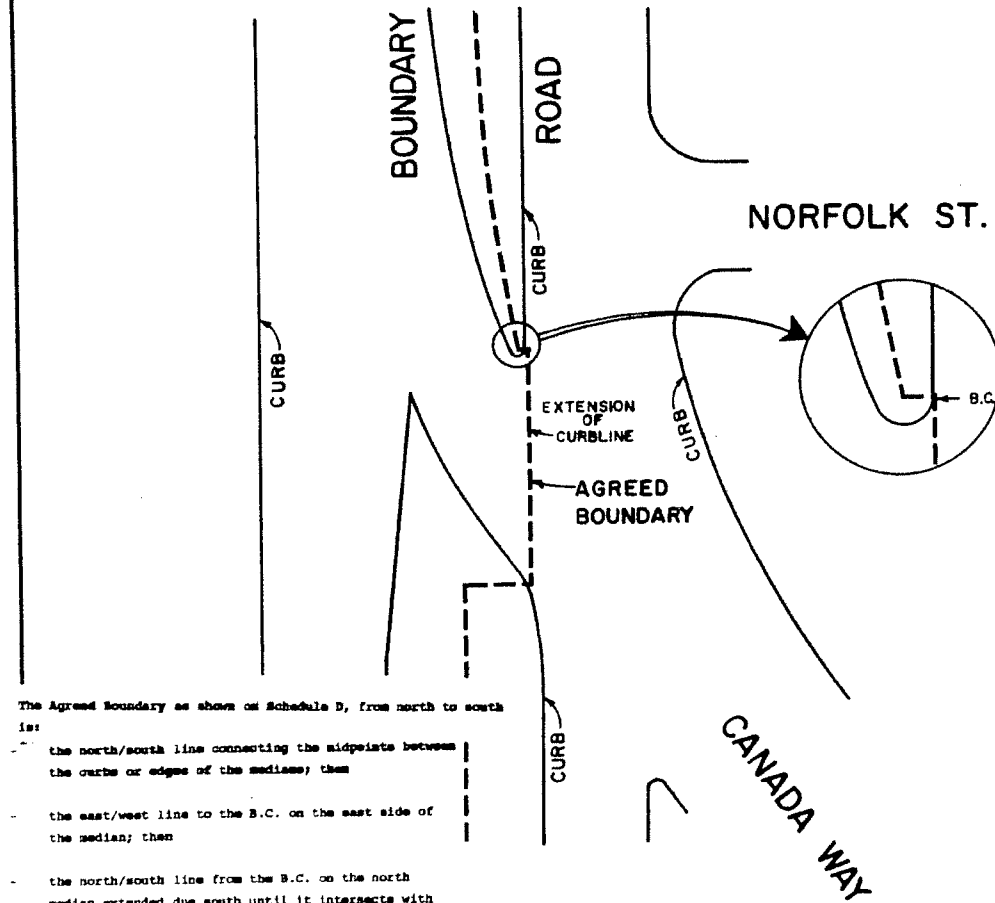
B.C. - BEGINNING OF CURVE



SCHEDULE C



SCHEDULE D

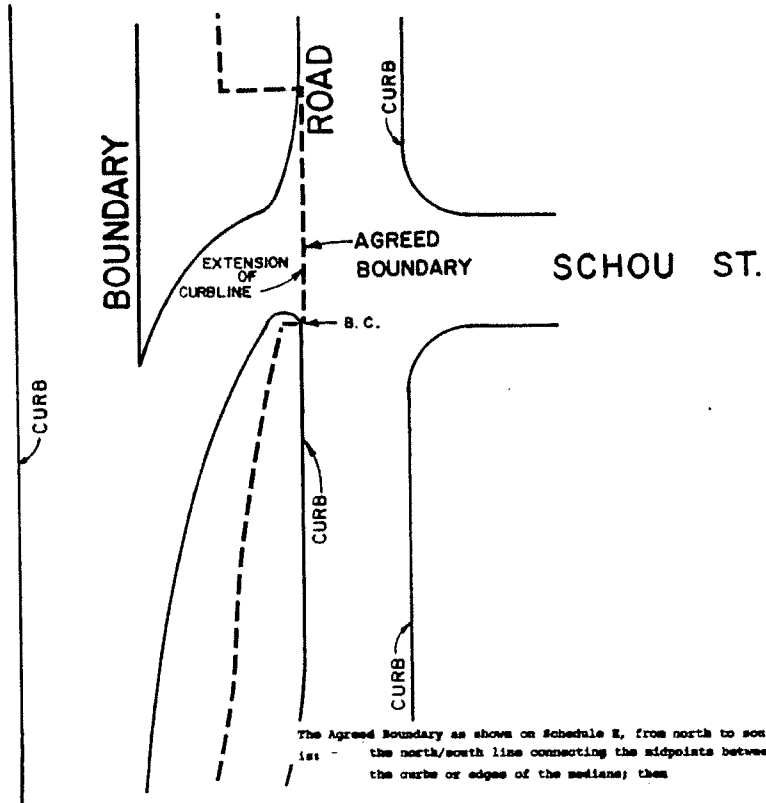


The Agreed Boundary as shown on Schedule D, from north to south is:

- the north/south line connecting the midpoints between the curbs or edges of the medians; then
- the east/west line to the B.C. on the east side of the median; then
- the north/south line from the B.C. on the north median extended due south until it intersects with the southerly median; then
- the east/west line from the intersection of the line above and the curb; then
- the north/south line connecting the midpoints between the curbs or edges of the medians

B.C. - BEGINNING OF CURVE

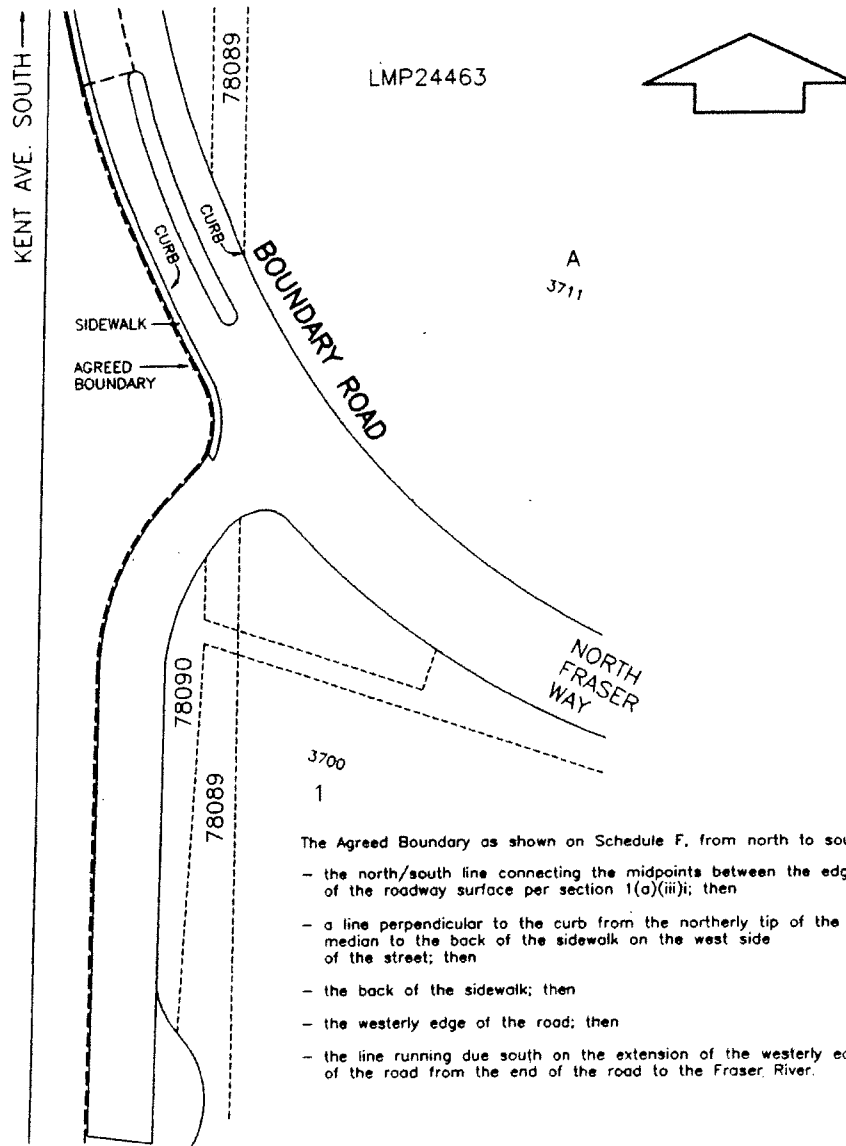
SCHEDULE E



- The Agreed Boundary as shown on Schedule E, from north to south
- 1st - the north/south line connecting the midpoints between the curbs or edges of the medians; then
  - the east/west line to the extension of the east curb line of the southerly median with the curb of the northerly median; then
  - the extension of the east curb line of the southerly median to the B.C. on the east side of the southerly median; then
  - the east/west line from the B.C. of the southerly median; then
  - the north/south line connecting the midpoints between the curbs or edges of the medians

B.C. - BEGINNING OF CURVE





- The Agreed Boundary as shown on Schedule F, from north to south is:
- the north/south line connecting the midpoints between the edges of the roadway surface per section 1(a)(iii); then
  - a line perpendicular to the curb from the northerly tip of the median to the back of the sidewalk on the west side of the street; then
  - the back of the sidewalk; then
  - the westerly edge of the road; then
  - the line running due south on the extension of the westerly edge of the road from the end of the road to the Fraser River.

SCHEDULE F

**EXPLANATION****2009 Real Property Tax Interest on Arrears**

The attached by-law will implement Council's resolution of September 16, 2008 to set the interest rate for delinquent real property taxes for 2009 at 8.75%.

Director of Legal Services  
September 16, 2008

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



**A By-law to provide for the imposition of interest  
on delinquent property taxes for 2009**

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

1. The name of this By-law, for citation, is the "2009 Real Property Tax Interest By-law".
2. All real property taxes that are or become delinquent after December 31, 2008 are to bear interest at the rate of 8.75% per annum compounded annually.
3. 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 133 Keefer Street**

After the public hearing on July 8, 2008, Council resolved to enter into a by-law to authorize an agreement with the owner of the property at 133 Keefer Street pursuant to Section 592 of the Vancouver Charter. The Director of Planning has advised that there are no prior-to conditions, and enactment of the attached by-law will implement Council's resolution.

Director of Legal Services  
September 16, 2008

133 Keefer 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 133 Keefer Street, and the following legal description:

Parcel Identifier: 015-666-590  
Lot 18  
Block 15  
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 \_\_\_\_\_, 2008

\_\_\_\_\_  
Mayor

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

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 18 pages

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

Jim Blair

City of Vancouver Law Department

453 West 12th Avenue

Vancouver, B.C., V5Y 1V4

Phone 873-7514 (BTQ/mk) Client No. 10647

Signature of Agent

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

(PID)

(LEGAL DESCRIPTION)

015-666-590

Lot 18 Block 15 District Lot 196 Plan 184

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):\*

SOY DEVELOPMENTS LTD., Incorporation No. BC0771840

WATT-Q HOLDINGS LTD. (as to priority)

EAT-ME FOODS LTD. (as to priority)

GULF AND FRASER FISHERMEN'S CREDIT UNION (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	
_____	08			<b>SOY DEVELOPMENTS LTD.</b> by its authorized signatory(ies)
Solicitor/Notary				Print Name: _____
_____				Print Name: _____
_____	08			<b>WATT-Q HOLDINGS LTD.,</b> by its authorized signatory(ies)
Solicitor/Notary				Print Name: _____
_____				Print Name: _____
_____	08			<b>EAT-ME FOODS LTD.,</b> by its authorized signatory(ies)
Solicitor/Notary				Print Name: _____
_____				Print Name: _____

**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 D

EXECUTIONS CONTINUED

Officer Signature(s)	Execution Date			Transferor/Borrower/Party Signature(s)
	Y	M	D	
_____ Solicitor/Notary	08			<b>GULF AND FRASER FISHERMEN'S CREDIT UNION</b> , by its authorized signatory(ies)  _____ Print Name:
_____ Bruce T. Quayle Barrister and Solicitor 453 West 12 <sup>th</sup> Avenue Vancouver, BC V5Y 1V4 Tel: 604-873-6545	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 9 - 12, Article 2	Transferee
Priority Agreement granting the above Section 219 Covenant priority over Mortgage BA144878	Pages 16 and 17	Transferee
Priority Agreement granting the above Section 219 Covenant priority over Mortgage BB388463 and Assignment of Rents BB388464	Page 18	Transferee
Section 219 Covenant	Page 13, Article 4	Transferee
Priority Agreement granting the above Section 219 Covenant priority over Mortgage BA144878	Pages 16 and 17	Transferee
Priority Agreement granting the above Section 219 Covenant priority over Mortgage BB388463 and Assignment of Rents BB388464	Page 18	Transferee
Statutory Right of Way	Page 13 - 14, Article 6	Transferee
Priority Agreement granting the above Statutory Right of Way priority over Mortgage BA144878	Pages 16 and 17	Transferee

**LAND TITLE ACT  
Form E**

**SCHEDULE**

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Enter The Required Information in the same order as the information must appear on the Freehold Transfer Form, Mortgage Form or General Document Form

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**3. NATURE OF INTEREST:\* (continued)**

Priority Agreement granting the above Statutory Right of Way priority over Mortgage BB388463 and Assignment of Rents BB388464	Page 18	Transferee
Equitable Charge	Page 14 - 15, Article 7	Transferee
Priority Agreement granting the above Equitable Charge priority over Mortgage BA144878	Pages 16 and 17	Transferee
Priority Agreement granting the above Equitable Charge priority over Mortgage BB388463 and Assignment of Rents BB388464	Page 18	Transferee

**TERMS OF INSTRUMENT - PART 2**

**Heritage Revitalization Agreement  
133 Keefer Street (formerly 135 Keefer Street)**

**WHEREAS:**

A. The Transferor (the “Owner”) is the registered owner of the lands and premises at 133 Keefer Street (formerly 135 Keefer Street) in the City of Vancouver, with the legal description:

PID: 015-666-590  
Lot 18 Block 15 District Lot 196 Plan 184

(the “Lands”)

B. There is a four storey building situated on the Lands that is considered to be of heritage value and is listed on the City of Vancouver’s Heritage Register as a category “C” property (the “Heritage Building”).

C. Pursuant to development permit application No. DE411880 (the “DP Application”), the Owner proposes that, in return for the provision certain incentives from the City, it will redevelop the Lands by adding one storey to the top of the Heritage Building, rehabilitating the Heritage Building and converting its uses from retail/warehouse to retail/residential.

D. The City will permit the foregoing proposal, subject to a number of conditions, including, without limitation, the condition that Owner is to enter into a contract with the City providing, among other things, that the Owner, at its expense, will rehabilitate the Heritage Building in a timely fashion and all times thereafter will preserve and maintain it as rehabilitated.

E. Pursuant to Section 592 of the *Vancouver Charter* S.B.C. 1953, c.55, a heritage revitalization agreement may, among other things, vary or supplement provisions of a subdivision by-law, a zoning by-law, a development cost levy by-law, a development permit and a heritage alteration permit, and may include such other terms and conditions as the City’s Council and the Owner may agree.

THEREFORE 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, where applicable, pursuant to Section 592 of the *Vancouver Charter* S.B.C. 1953, c.55 the parties agree as follows:

**ARTICLE 1  
DEFINITIONS AND INTERPRETATION**

1.1 Definitions. Except where otherwise explicitly and specifically provided for in this agreement, the terms defined here have the following meanings throughout this agreement:

- (a) “**Building By-law**” means the City of Vancouver Building By-law, as varied and supplemented from time to time;
- (b) “**Charter**” means the *Vancouver Charter*, SBC 1953 c. 55;
- (c) “**City**” means the City of Vancouver as a municipal corporation continued pursuant to *Charter*;
- (d) “**City of Vancouver**” means the City’s geographic location and area;
- (e) “**conservation**” means all actions or processes that are aimed at safeguarding the character defining elements of a heritage resource so as to retain its heritage value and extend its physical life, including, without limitation, preservation, rehabilitation, restoration or a combination of these actions or procedures;
- (f) “**Conservation Plan**” means a written plan and guidelines prepared by or under the supervision of a Heritage Consultant for the conservation of the Heritage Building;
- (g) “**Development Permit**” is the City Development Permit(s) to be issued pursuant to the DP Application;
- (h) “**DP Application**” has the meaning given in Recital C above;
- (i) “**Effective Date**” means the date that this agreement is duly executed by the City;
- (j) “**Floor Space**” means the floor space area of a development or a portion of a development, calculated in accordance with the Zoning and Development By-laws;
- (k) “**Heritage Building**” means the Heritage Building as defined in Recital B above and includes, without limitation, all permitted replacements thereof and additions thereto and therein;
- (l) “**Heritage Consultant**” means an independent, heritage building conservation consultant who is a duly qualified to carry out and supervise the carrying out of and knowledgeable and experienced in heritage building conservation planning and procedures;
- (m) “**Heritage Façade**” means the Heritage Building’s principle, existing, exterior façade, which covers the front of the Heritage Building, facing Keefer Street;
- (n) “**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;
- (o) “**Lands**” has the meaning given in Recital A above and includes, without limitation, any and all parcels into which they are consolidated and/or in any way subdivided;

- (p) “**LOC**” has the meaning given to it in section 3.3 of this agreement;
- (q) “**Owner**” means the registered owner of the Lands and all of his, her or its assigns, successors and successors in title to the Lands or any part of them;
- (r) “**Transferable Density**” means transferable, land development rights of 62,853 square feet of Floor Space;
- (s) “**Zoning and Development By-laws**” means those of the by-laws of the City that from time to time regulate the use and development of land in the City of Vancouver, including, without limitation, with respect to allowable density and floor space ratios, and are applicable to the Lands and to every part into which the Lands may be subdivided, including, without limitation, the City’s Zoning and Development By-Law No. 3575.

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 CONSERVATION OF HERITAGE BUILDING

2.1 Pursuant to Section 219 of the *Land Title Act* for subparagraphs (a), (c), (e), (f), (g), (i) and (l) of this Article 2.1, and pursuant to Section 592 of the *Charter* for all of this Article 2, the Owner covenants to and agrees with the City that:

- (a) the Owner, at its expense, and to the City’s satisfaction, within a period of 24 months from the Effective Date, will rehabilitate the Heritage Building in accordance with the Development Permit, including, without limitation, such structural rehabilitation and upgrading and such restoration of heritage characteristics, features, components and fixtures as required by the Development Permit;

- (b) the Owner, at its expense, will ensure that in all respects a Heritage Consultant will supervise the rehabilitation of the Heritage Building as required hereby;
- (c) the Owner, at its expense, and to the City's satisfaction, will secure the Heritage Building from vandalism and occupation by squatters at all times during its rehabilitation under this agreement;
- (d) once the rehabilitation of the Heritage Building as required hereby is complete, the Owner, at its expense, will deliver to the City a signed statement from a Heritage Consultant confirming explicitly, to the City's satisfaction, that the rehabilitation of the Heritage Building as required hereby has been fully completed;
- (e) at all times after completion of the rehabilitation of the Heritage Building as required by this agreement, the Owner, at its expense, will conserve the Heritage Building, as rehabilitated, in accordance with a Conservation Plan approved by the City and, in any event, in good condition in all respects as would a reasonable and prudent owner;
- (f) the Owner will not in any way alter the exterior of, make structural changes to or in any way renovate or reconfigure the Heritage Building after its rehabilitation pursuant to this agreement is complete, except as may be permitted by this agreement, the Development Permit or a heritage alteration permit issued by the City;
- (g) the Owner will refrain from doing anything at any time to obscure, deface or remove any commemorative plaque the City may affix to the Heritage Building pursuant to the statutory right of way granted to the City herein;
- (h) the Owner, at its expense, to the City's satisfaction, at all times during and after the rehabilitation of the Heritage Building pursuant to this agreement, will obtain and keep insurance for the Heritage Building so that it is insured to full replacement value against all perils, including, without limitation, earthquake;
- (i) if the Heritage Building is ever damaged in any way, the Owner, at its expense, will repair and restore it and its appearance as necessary to put it back into the condition and appearance it was in prior to the damage, unless it is unlawful or uneconomical to do so, in which case, the Owner will not be obligated to repair the Heritage Building but will be restricted to building on the Lands a building of similar form, appearance, massing, quality of materials, detailing and height of the damaged Heritage Building after rehabilitation pursuant to this agreement, and the City, at the Owner's expense, will execute and deliver an amendment to and, to the extent applicable, a partial discharge of this agreement to reflect such change in circumstances;

- (j) in any determination as to whether it is uneconomical to repair the Heritage Building, if it is ever damaged in any way, only building repair construction costs as compared to building replacement construction costs and the heritage incentives that have been granted in respect of the Heritage Building will be taken into consideration;
- (k) if the Heritage Building is ever damaged in some way, and the Owner and the City cannot agree on whether it is uneconomical to make repairs thereto, the matter will be determined by arbitration as follows: within thirty (30) days following written notice of the dispute by either party to the other, such dispute will be referred to a single arbitrator to be chosen by the Owner and the City or, 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 will be chosen by the Owner, one (1) of whom will be chosen by the City and the third by the two (2) so arbitrators chosen, and the third arbitrator so chosen will be the chairman, in which case decisions in arbitration hereunder will be made by the majority of the arbitrators. 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, will apply; and
- (l) the Owner will not and will not suffer or permit any other person to in any way use or occupy the Heritage Building at anytime after commencement of its rehabilitation pursuant to this agreement and the Development Permit, until the City has issued a new occupancy permit for the Heritage Building, and the Owner will not and will not permit any other person to apply for or take any action to compel the City, and, notwithstanding that all other conditions and City by-law requirements in respect thereof may have been fulfilled, the City will be under no obligation to issue any occupancy permit for the Heritage Building, until its rehabilitation as required by this agreement has been completed to City's satisfaction and the Owner, at its expense, has delivered a Conservation Plan to the City to its satisfaction.

2.2 If the Owner fails to carry out the rehabilitation of the Heritage Building or at anytime fails to carry out its obligations to preserve and protect the Heritage Building as required hereby, subject to the provisions of this agreement, the City may do so on the Owner's behalf.

### ARTICLE 3 TRANSFERABLE DENSITY

3.1 Upon registration of this agreement on title to the Lands, to the City's satisfaction, the City will assign the Transferable Density to the Lands.

3.2 The Owner's use of the Transferable Density will be subject to the provisions of the *Charter*, to all City policies governing the use and transfer of the Transferable Density and to the following restrictions:

- (a) the Transferable Density will not be used on the Lands;



- (b) the Transferable Density may be transferred only to locations identified by the City in its Transfer of Density Policy; and
- (c) except as may be otherwise provided for herein, none of the Transferable Density will be transferred from the Lands to any other lands until the rehabilitation of the Heritage Building as required hereby is complete and an occupancy permit for full occupancy of the Heritage Building has been issued.

3.3 Notwithstanding the foregoing, the Owner will be permitted to transfer some or all of the Transferable Density before the rehabilitation of the Heritage Building pursuant to this agreement is complete and/or an occupancy permit for the has been issued therefor, if, to the City's satisfaction, all of the following conditions have been met:

- (a) this agreement has been fully registered in the Land Title Office in the manner set out in the agreement;
- (b) the City has issued a Development Permit and a building permit in relation to the rehabilitation of the Heritage Building as required hereby;
- (c) the Owner has provided to the City a letter of credit (the "LOC") in the amount equal to the lesser of:
  - (i) one hundred and twenty percent (120%) of the then estimated cost to complete the rehabilitation of the Building as required hereby (such estimated cost to be made by the Consultant and the Owner's quantity surveyor and explicitly accepted in writing by the City); or
  - (ii) three million one hundred and forty two thousand six hundred and fifty eight dollars (\$ 3,142,658.00) (the value of the Transferable Density at \$50 per sq. ft.);
- (d) the Owner complies with all City policies and procedures with respect to transfer of Transferable Density; and
- (e) the Owner is not at the time of transfer of Transferable Density in any way in breach of any of its obligations under in this agreement or any other agreement between the City and the Owner with respect to the Lands.

3.4 The LOC will be issued by a Schedule I Canadian chartered bank and will be irrevocable and self-renewing and otherwise in a form and content acceptable to the City and will be provided for a period of one (1) year with a provision for an automatic renewal or extension without amendment from year to year until the Owner has completed the rehabilitation of the Heritage Building as required by this agreement.

3.5 The City may call upon the LOC and hold the funds therefrom until the rehabilitation of the Heritage Building as required hereby is complete if:

- (a) at anytime prior to completion of the rehabilitation of the Heritage Building pursuant to this agreement the bank issuing the letter of credit refuses to extend

or renew the expiry date of the letter of credit;

- (b) the Owner becomes insolvent or commits any acts of bankruptcy or becomes bankrupt or takes the benefit of any act or legislation that may be enforced for bankrupts or insolvent debtors; or
- (c) the Owner fails to carry out the rehabilitation of the Heritage Building as required by this agreement.

3.6 The City may use funds from the LOC to cover any costs the City may incur if in any way it carries out any of the rehabilitation or other conservation of the Heritage Building pursuant to this agreement.

#### **ARTICLE 4 FAÇADE GRANT**

4.1 Subject to set-off of any amounts the Owner may owe to the City for any unsatisfied obligations of the Owner pursuant to this agreement or the Development Permit, the City will pay to the Owner, in relation to the rehabilitation of the Heritage Façade, a façade grant in an amount equal to the actual, reasonable cost to the Owner of fully restoring the Heritage Façade in accordance with the Development Permit, to the City's satisfaction, to a maximum fifty thousand dollars (\$50,000.00):

- (a) upon the completion of the rehabilitation of the Heritage Building in accordance with this agreement and the Development Permit;
- (b) upon the City's Director of Planning having received a signed statement from the Consultant confirming completion of the rehabilitation of the Heritage Façade in accordance with this agreement and the Development Permit;
- (c) upon the City issuing an occupancy permit for full occupancy of the Heritage Building as redeveloped pursuant to the Development Permit;
- (d) if all obligations of the Owner to the City pursuant to this agreement and the Development Permit in connection with the rehabilitation of the Heritage Building have, in the opinion of the City, been fully satisfied;
- (e) if the Owner is not then in arrears of property taxes in respect of the Lands; and
- (f) if the Owner has complied with all City policies regarding the rehabilitation of the Heritage Façade.

#### **ARTICLE 5 STATUTORY RIGHT OF WAY**

5.1 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 to install upon the exterior of the Heritage Building a commemorative plaque regarding the Heritage Building's historical significance and, if the City chooses, in the event the Owner fails to carry out the rehabilitation of the Heritage Building as required hereby, to carry out or complete the rehabilitation of and/or to

preserve, protect, maintain, repair and/or replace the Heritage Building in accordance with this agreement and the Development Permit.

5.2 Notwithstanding the foregoing, nothing herein in any way obligates the City to carry out in whole or in part any rehabilitation work on the Heritage Building or to preserve, protect, maintain, repair or replace it.

5.3 In the event that the City enters upon the Lands to conduct all, or any part, of the rehabilitation of the Heritage Building or any other work contemplated by Section 5.1:

- (a) there will be no express or implied warranties as to the quality of such rehabilitation work or any other work contemplated by Section 5.1 or the suitability of the materials for the purposes for which they are put; and
- (b) the Owner will pay to the City the costs incurred by the City in undertaking such rehabilitation work or any part thereof, and any other work contemplated by Section 5.1, plus twenty percent (20%) of such costs as fair compensation for the City's administrative costs.

5.4 The statutory right of way set out in this Article 5 is necessary for the operation and maintenance of the City's undertaking.

#### **ARTICLE 6 EQUITABLE CHARGE**

6.1 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 6 will 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 7 RELEASE AND INDEMNITY**

7.1 The Owner hereby releases the City and its officials, councillors, employees, contractors, agents and licensees (each, a "City Party" for the purposes of this Section 7.1) and will indemnify them for and save them harmless from and against all liabilities, actions, statutory or other proceedings, judgements, investigations, claims, losses, loss of profit, injuries, damages, consequential damages, fines, penalties, costs and, on an actual cost basis, legal costs the City, any City Party, the Owner or any other person or entity may suffer, incur or experience as a result of or in any way connected with:

- (a) the inability of the Owner to use, in whole or in part, any of the Transferable Density, whether such inability arises from the decision of the City's Development Permit Board, City Council, a court of competent jurisdiction or otherwise;
- (b) the City conducting all or any portion of the rehabilitation of the Heritage Building 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 this agreement and otherwise applicable to the Lands;
- (d) this agreement, except to the extent the same arises directly and solely from a default of the City or a City Party hereunder;
- (e) any release of this agreement or the loss of any of the rights granted hereunder;
- (f) the non-compliance, if any, of the Lands, the Heritage Building or any part thereof with any City by-law; and
- (g) the issuance of any development permit in respect of the Lands.

The release and indemnity set out in this Article 7 will survive the expiration or earlier termination of this Agreement and will survive any modification, release or partial release of any of the covenants created by this Agreement. The release and indemnity in this Article 7 will be both personal covenants of the Owner and an integral part of the Section 219 covenant granted in this agreement.

## **ARTICLE 8 GENERAL**

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

8.2 Time is of the essence in all respects in relation to this agreement and any instance of waiver of that requirement will not be a waiver for all or any other purpose hereunder.

8.3 The Owner, at his, her or its expense, after execution of this agreement, will do or cause to be done 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.

8.4 In any action to enforce this agreement the City will be entitled to court costs on an actual cost 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.

8.5 If the Land Title Office refuses to register this agreement, the Owner agrees to modify or re-execute this agreement to the City's satisfaction so as to enable registration.

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

8.7 Without limiting the generality of Section 8.6, 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 will charge each strata lot and will be noted on the common property sheet of the strata corporation;
- (b) the strata corporation or strata corporations so created will 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 will be in proportion to the unit entitlement of his, her or its strata lot as established by the strata plan and will be treated as a common expense and all strata lot owners will 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.

8.8 If ever 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 thereof pursuant to this agreement has been completed to the City's satisfaction, 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.

8.9 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* 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.

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

**PRIORITY AGREEMENT****MEMORANDUM AS TO ENCUMBRANCES, LIENS and INTERESTS**

**WATT-Q HOLDINGS LTD.** as to an undivided 1450000/1835000 interest  
(the "Chargeholder")  
holder of Mortgage No. BA144878 (the "Charge")  
charging Lot 18 Block 15 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 consents to the granting of the Section 219 Covenant, Statutory Right of Way and Equitable Charge (collectively, the "Encumbrance") which are contained in the attached agreement, and consents and agrees 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.

IN WITNESS WHEREOF the Chargeholder has executed this Priority Agreement by causing its proper officers to sign the General Instrument - Part 1 attached hereto.

**PRIORITY AGREEMENT****MEMORANDUM AS TO ENCUMBRANCES, LIENS and INTERESTS**

**EAT-ME FOODS LTD.** as to an undivided 385000/1835000 interest  
(the "Chargeholder")  
holder of Mortgage No. BA144878 (the "Charge")  
charging Lot 18 Block 15 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 consents to the granting of the Section 219 Covenant, Statutory Right of Way and Equitable Charge (collectively, the "Encumbrance") which are contained in the attached agreement, and consents and agrees 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.

IN WITNESS WHEREOF the Chargeholder has executed this Priority Agreement by causing its proper officers to sign the General Instrument - Part 1 attached hereto.

**PRIORITY AGREEMENT****MEMORANDUM AS TO ENCUMBRANCES, LIENS and INTERESTS****GULF AND FRASER FISHERMEN'S CREDIT UNION**

(the "Chargeholder")

holder of Mortgage No. BB388463 and Assignment of Rents No. BB388464

(collectively, the "Charge")

charging Lot 18 Block 15 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 consents to the granting of the Section 219 Covenant, Statutory Right of Way and Equitable Charge (collectively, the "Encumbrance") which are contained in the attached agreement, and consents and agrees 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.

IN WITNESS WHEREOF the Chargeholder has executed this Priority Agreement by causing its proper officers to sign the General Instrument - Part 1 attached hereto.

**END OF DOCUMENT**



**EXPLANATION****Heritage Designation By-law  
re 133 Keefer Street**

After the public hearing on July 8, 2008, Council approved a recommendation to designate 133 Keefer Street as protected heritage property. Enactment of the attached by-law will achieve the designation.

Director of Legal Services  
September 16, 2008

133 Keefer Street

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



**A By-law to designate certain real property  
as protected heritage property**

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

1. Council considers that the real property described as:

Structure and  
exterior envelope of  
the improvements  
and exterior  
building materials

133 Keefer Street

Parcel Identifier: 015-666-590  
Lot 18  
Block 15  
District Lot 196  
Plan 184

has heritage value or heritage character, and that its designation as protected heritage property is necessary or desirable for its conservation.

2. Council designates the real property described in section 1 of this By-law as protected heritage property under Section 593 of the *Vancouver Charter*.

3. 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****Heritage Taxation Exemption By-law  
re 133 Keefer Street**

On July 8, 2008, Council approved a heritage taxation exemption for eligible heritage property at 133 Keefer Street to a value of \$421,353.00 or 10 years, whichever first occurs.

Director of Legal Services  
September 16, 2008

133 Keefer Street



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

**Heritage Taxation Exemption By-law**

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 Parcel Identifier: 015-666-590, Lot 18, Block 15, District Lot 196, Plan 184:

- (a) to a value of \$421,353.00, 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 DE411880 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 DE411880 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 \_\_\_\_\_, 2008

\_\_\_\_\_  
Mayor

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

## EXPLANATION

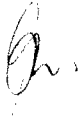
**Authorization to enter into a  
Heritage Revitalization Agreement  
with the owner of 512 Glen Drive, 520 Glen Drive  
and 1106 East Pender Street**

After the public hearing on July 8, 2008, Council resolved to enter into a by-law to authorize an agreement with the owner of **The James F. and Lillian A. Downer Houses** pursuant to Section 592 of the Vancouver Charter. The Director of Planning has advised that there are no prior-to conditions, and enactment of the attached by-law will implement Council's resolution.

Director of Legal Services  
September 16, 2008

512 Glen Drive  
520 Glen Drive  
1106 East Pender Street  
The James F. and Lillian A. Downer Houses

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 512 Glen Drive, 520 Glen Drive, and 1106 East Pender Street, and the following legal descriptions:

Parcel Identifier: 015-365-140

Lot 1

Parcel Identifier: 015-365-166

Lot 2

Both of:

Block 15 of Block A

District Lot 182

Plan 355

contain three heritage buildings.

Council is of the opinion that the buildings have sufficient heritage value to justify their 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                      , 2008

\_\_\_\_\_  
Mayor

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

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)

Jim Blair  
City of Vancouver Law Department  
453 West 12th Avenue  
Vancouver, B.C., V5Y 1V4  
Phone 873-7514 (BTQ/mk) Client No. 10647

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

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

(PID)	(LEGAL DESCRIPTION)
015-365-140	Lot 1 Block 15 of Block A District Lot 182 Plan 355
015-365-166	Lot 2 Block 15 of Block A District Lot 182 Plan 355

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  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):\*

**HERITAGE VANCOUVER HOLDINGS LTD.**, Incorporation No. BC0614771

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	
<hr/> (Solicitor)	08			<b>HERITAGE VANCOUVER HOLDINGS LTD.</b> by its authorized signatory(ies) <hr/> Print Name: <hr/> Print Name:
<hr/> Bruce T. Quayle Barrister and Solicitor 453 West 12 <sup>th</sup> Avenue Vancouver, BC V5Y 1V4 Tel: 604-873-6545	08			<b>CITY OF VANCOUVER</b> by its authorized signatory: <hr/> 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**

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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 7 - 10, Article 2	Transferee
Statutory Right of Way	Page 11, Article 4	Transferee
Equitable Charge	Page 11, Article 5	Transferee

**TERMS OF INSTRUMENT - PART 2**

**Heritage Revitalization Agreement  
512 Glen Drive, 520 Glen Drive and 1106 East Pender Street**

**WHEREAS:**

A. The Transferor (the "Owner") is the registered owner of the following lands and premises:

PID: 015-365-140

Lot 1 Block 15 of Block A District Lot 182 Plan 355

and

PID: 015-365-166

Lot 2 Block 15 of Block A District Lot 182 Plan 355

(together, the "Lands")

B. There are three buildings situated on the Lands, known as The James F. & Lillian A. Downer Houses (the "Heritage Buildings"), which are considered to be of heritage value and are listed on the City's Heritage Register as a Category B properties.

C. Pursuant to development permit application Nos. DE411664, DE411665 and DE411636 (the "DP Application"), the Owner has applied to the City for permission to redevelop the Lands by:

- (i) creating, in place of the two existing parcels, three (3) parcels of land with the civic addresses 500, 512, 516, 520 & 524 Glen Drive and 1106 & 1110 East Pender Street, each containing one of the Heritage Buildings;
- (ii) retaining the existing historic uses of and the number of dwelling units within the Heritage Buildings as follows:
  - a. 512 & 516 Glen Drive - a two family dwelling;
  - b. 520 & 524 Glen Drive - a two family dwelling;
  - c. 500 Glen Drive and 1106 & 1110 East Pender Street - a multiple conversion dwelling; and
- (iii) restoring and rehabilitating the Heritage Buildings and their heritage characteristics and features and securing the long term protection and maintenance thereof.

D. The City will permit the foregoing proposal, subject to a number of conditions, including, without limitation, that the Owner is to agree in a binding agreement that the Heritage Buildings

will be rehabilitated as a Heritage Buildings in a timely fashion and preserved and maintained as such at all times thereafter at the Owner's expense.

E. Pursuant to Section 592 of the *Vancouver Charter* S.B.C. 1953, c.55, a heritage revitalization agreement may, among other things, vary or supplement provisions of a subdivision by-law, a zoning by-law, a development cost levy by-law, a development permit and a heritage alteration permit, and may include such other terms and conditions as the City's Council and the Owner may agree.

THEREFORE 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, where applicable, pursuant to Section 592 of the *Vancouver Charter* S.B.C. 1953, c.55 the parties agree as follows:

## ARTICLE 1 DEFINITIONS AND INTERPRETATION

1.1 **Definitions.** Except where otherwise explicitly and specifically provided for in this agreement, the terms defined here have the following meanings throughout this agreement:

- (a) **"Building By-law"** means the City of Vancouver Building By-law, as varied and supplemented from time to time;
- (b) **"Charter"** means the *Vancouver Charter*, SBC 1953 c. 55;
- (c) **"City"** means the City of Vancouver as a municipal corporation continued pursuant to *Charter*;
- (d) **"City of Vancouver"** means the City's geographic location and area;
- (e) **"Conservation Plan"** means a written plan and guidelines prepared by or under the supervision of a Consultant for the conservation and preservation of the Heritage Buildings after its rehabilitation as required hereby is complete;
- (f) **"Consultant"** means an independent, Heritage Buildings consultant who is a duly registered architect or professional engineer in good standing or any other independent, Heritage Buildings consultant acceptable to the City with substantial architectural and/or engineering experience in the restoration and preservation of old and/or Heritage Buildings;
- (g) **"Development Permit"** is the City Development Permit(s) issued pursuant to the DP Application;
- (h) **"DP Application"** has the meaning given in Recital C above;
- (i) **"Effective Date"** means the date that this agreement is executed by the City;

- (j) “**Floor Space**” means the total floor space area of a development in the City of Vancouver, calculated in accordance with the Zoning and Development By-laws;
- (k) “**fsr**” means permitted “floor space ratio” under the City’s Zoning and Development Bylaws and, more particularly, is the ratio of the permitted Floor Space for a development as compared to the size of the parcel of land upon which the development is or is to be situated;
- (l) “**Heritage Buildings**” means the Heritage Buildings as defined in Recital B above and includes, without limitation, all permitted replacements thereof and therein and additions thereto;
- (m) “**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;
- (n) “**Lands**” has the meaning given in Recital A above and includes, without limitation, any and all parcels into which they are consolidated and/or in any way subdivided;
- (o) “**Owner**” means the registered owner of the Lands and all of his, her or its assigns, successors and successors in title to the Lands;
- (p) “**Zoning and Development By-laws**” means those of the by-laws of the City that from time to time regulate the use and development of land in the City of Vancouver, including, without limitation, with respect to allowable density and floor space ratios, and are applicable to the Lands and to every part into which the Lands may be subdivided, including, without limitation, the City’s Zoning and Development By-Law No. 3575.

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 & PRESERVATION OF HERITAGE BUILDINGS**

2.1 Pursuant to Section 592 of the *Charter* for all of this Article 2 and pursuant to Section 219 of the *Land Title Act* for subparagraphs (a), (c), (e), (f), (g), (i) and (l) of this Article 2.1, the Owner covenants to and agrees with the City that:

- (a) within a period of 24 months from the date that a building permit is issued for any of the Heritage Buildings, the Owner, at its expense, will rehabilitate and restore all of the Heritage Buildings so as to restore and where necessary replace their heritage characteristics, features, components and fixtures to the City's satisfaction in accordance with the Development Permit, including, without limitation, as may be required thereby:
  - (i) seismic upgrading of the Heritage Buildings so that they meet current building, structural requirements of the Vancouver Building By-law;
  - (ii) rehabilitation and restoration of the Heritage Buildings so as to be maintained and preserved as a Heritage Buildings as required by the Development Permit; and
  - (iii) delivery to the City of a Conservation Plan satisfactory to the City;
- (b) the Owner, at its expense, will ensure that a Consultant supervises the rehabilitation of the Heritage Buildings as required hereby in all respects;
- (c) to the City's satisfaction, the Owner, at its expense, will secure the Heritage Buildings from vandalism and occupation by squatters at all times during their rehabilitation under this agreement;
- (d) once the rehabilitation of a Heritage Building as required hereby is complete, the Owner, at its expense, will deliver to the City a signed statement from a Consultant confirming explicitly to the City's satisfaction that the rehabilitation of the Heritage Buildings as required hereby has been fully completed;
- (e) at all times after completion of the rehabilitation of the Heritage Buildings, and each of them, as required by this agreement, the Owner, at its expense, will preserve, protect, maintain and keep each of the Heritage Buildings, as a Heritage Building, in accordance with a Conservation Plan approved by the City and, in any event, in good condition in all respects as would a reasonable and prudent owner;
- (f) the Owner will not in any way alter the exterior of, make structural changes to or renovate or reconfigure any of the Heritage Buildings (or any part thereof) after their rehabilitation pursuant to this agreement is complete, except as may be permitted by this agreement, the Development Permit or a heritage alteration permit issued by the City;

- (g) the Owner will refrain from doing anything at any time to obscure, deface or remove any commemorative plaque the City may affix to the Heritage Buildings or any of them;
- (h) to the City's satisfaction, the Owner, at its expense, will obtain and keep insurance for the Heritage Buildings so that they are insured to full replacement value against all perils, including, without limitation, earthquake, at all times during and after the rehabilitation thereof; and
- (i) if the Heritage Buildings are, or any of them is, ever damaged in any way, the Owner, at its expense, will repair it and restore its or their appearance as necessary to put it back into the condition and appearance it or they were in prior to the damage, unless it is unlawful or uneconomical to do so, in which case, the Owner will not be obligated to repair the Heritage Buildings but will be restricted to building on the Lands a building or buildings of similar form, appearance, massing, quality of materials, detailing and height of the damaged Heritage Buildings after rehabilitation pursuant to this agreement, at the Owner's expense, will execute and deliver an amendment and, to the extent applicable, a partial discharge of this agreement to reflect such change in circumstances;
- (j) in any determination as to whether it is uneconomical to repair the Heritage Buildings if they are ever damaged in any way, only land economic factors will be considered, including, without limitation, the cost of repair, the cost of a replacement building and the fact that heritage incentives have been granted in respect of the Heritage Buildings;
- (k) if the Heritage Buildings, or any of them, are damaged in some way, and the Owner and the City cannot agree on whether it is uneconomical to make repairs thereto, the matter will be determined by arbitration as follows: within thirty (30) days following written notice of the dispute by either party to the other, such dispute will be referred to a single arbitrator to be chosen by the Owner and the City or, 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 will be chosen by the Owner, one (1) of whom will be chosen by the City and the third by the two (2) so arbitrators chosen, and the third arbitrator so chosen will be the chairman, in which case decisions in arbitration hereunder will be made by the majority of the arbitrators. 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, will apply; and
- (l) after the Heritage Buildings that must be vacated for purposes of the rehabilitation work required hereby have been so vacated, the Owner will not and will not suffer or permit any other person to in any way use or occupy such Heritage Buildings, or any of them, until the rehabilitation of all of the Heritage Buildings as required hereby has been completed to City's satisfaction and the City has issued a new occupancy permit for each of the Heritage Buildings requiring one, and the Owner will not and will not permit any other person to apply for or take any action to compel the City and, notwithstanding that all other conditions and City by-law

requirements in respect thereof may have been fulfilled, the City will be under no obligation to issue any occupancy permit for any such Heritage Building until that time.

2.2 Notwithstanding the foregoing, if, prior to the time that all of the Heritage Buildings have been rehabilitated in accordance with this agreement, the Owner wishes to obtain an occupancy permit for any of the Heritage Building requiring a new occupancy permit at anytime after registration of this agreement on title to the Land, the Owner may do so if:

- (a) this agreement has been fully registered in the Land Title Office in the manner set out in the agreement;
- (b) the Development Permit and a building permit for the rehabilitation of all of the Heritage Buildings as required hereby have been issued to the Owner by the City;
- (c) all legal requirements for occupancy permits for the Heritage Buildings for which occupancy permits are sought have been fulfilled;
- (d) the Heritage Buildings for which occupancy permits are sought have been fully rehabilitated in accordance with this agreement;
- (e) the Owner has provided to the City a letter of credit in the amount equal to one hundred and twenty percent (120%) of the then estimated cost to complete the rehabilitation of the Heritage Buildings as required hereby (such estimated cost to be made by the Consultant and the Owner's quantity surveyor and explicitly accepted in writing by the City); and
- (f) the Owner is not at the time of issuance of any occupancy permit for any of the Heritage Buildings in breach of any of its obligations to the City set out in this agreement or any other agreement between the City and the Owner with respect to the Lands.

2.3 All letters of credit required by this Agreement will be issued by a Schedule I Canadian chartered bank and will be unconditional, irrevocable and self-renewing and otherwise in a form and content which is acceptable to the City. Further, all letters of credit will be provided for a period of one (1) year with a provision for an automatic renewal or extension without amendment from year to year until the Owner has, to the City's full satisfaction, completed all of its obligations under this Agreement. The City may call upon the letter of credit and apply the proceeds there from as the City sees fit if:

- (a) the bank issuing the letter of credit refuses to extend or renew the expiry date of the letter of credit;
- (b) the Owner becomes insolvent or commits any acts of bankruptcy or becomes bankrupt or takes the benefit of any act or legislation that may be enforced for bankrupts or insolvent debtors;



- (c) the Owner is not carrying out or has not carried out the rehabilitation of the Heritage Buildings pursuant to this agreement in a manner satisfactory to the City;
- (d) the City undertakes all or any part of the rehabilitation of the Heritage Buildings pursuant to this agreement; and/or
- (e) the Owner is in breach of any of its obligations under this agreement.

2.4 Any letters of credit issued in favour of the City pursuant to this agreement may be reduced in amount from time to time, at the Owner's request and expense, as the rehabilitation of the Heritage Buildings pursuant to this agreement progresses, on the City giving its explicit instructions to the issuing financial institution(s) to do so, provided that the reduced amount of the letter(s) of credit is always no less in total than one hundred and twenty percent (120%) of the then estimated cost to complete the rehabilitation of the Heritage Buildings as required hereby, with such estimated cost to be made by the Consultant and the Owner's quantity surveyor and explicitly accepted in writing by the City.

2.5 After full completion of the rehabilitation of the Heritage Buildings as required hereby, to the City's satisfaction, and the issuance of all occupancy permits required for full occupancy thereof as so rehabilitated, all letters of credit issued in favour of the City pursuant to this agreement may be cancelled by the City, within a reasonable time after the Owner's request, and at the Owner's expense, giving its explicit written instructions to the issuing financial institution(s) to cancel them.

### ARTICLE 3 BY-LAW VARIATIONS

3.1 Pursuant to Section 592 of the *Charter*, Section 9.1 of the City's Subdivision Bylaw is hereby varied in respect of the Lands so as permit the creation of three parcels therefrom covering areas of less than 2,800 sq. ft. each, as follows:

Parcel	Permitted Minimum Parcel Size
512 & 514 Glen Drive	Approximately 2,700 sq. ft. in total
520 & 524 Glen Drive	Approximately 2,634 sq. ft. in total
500 Glen Drive & 1106 & 1110 East Pender Street	Approximately 1,626 sq. ft. in total

3.2 The by-law variations effected by and the other benefits granted to the Owner in relation to this agreement are full and fair compensation for the obligations and restrictions placed upon the Owner by this agreement and any heritage designation made of the Heritage Buildings under the *Charter*, and the Owner hereby waives and renounces all claims for further or other compensation by reason of this agreement.

**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 to install upon the exterior of the Heritage Buildings a commemorative plaque regarding the Heritage Buildings' historical significance and, in the event that the Owner is in default of any of its obligations under this Agreement to rehabilitate the Heritage Buildings, to undertake and diligently prosecute to conclusion the rehabilitation of and to preserve, protect, maintain, repair and/or replace the Heritage Buildings, if the City should at any time choose to do so.

4.2 Notwithstanding the foregoing, nothing herein in any way obligates the City to carry out in whole or in part any rehabilitation work on the Heritage Buildings or to preserve, protect, maintain, repair and/or replace the Heritage Buildings.

4.3 In the event that the City enters upon the Lands to conduct all, or any part, of the rehabilitation of the Heritage Buildings or any other work contemplated by Section 4.1:

- (a) there will be no express or implied warranties as to the quality of such rehabilitation work 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 will pay to the City the costs incurred by the City in undertaking such rehabilitation work or any part thereof, and any other work contemplated by Section 4.1, plus twenty percent (20%) of such costs as fair compensation for the City's administrative costs.

4.4 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 7 will 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) the inability of the Owner to use, in whole or in part, any of the Transferable Density that may be used pursuant to this Agreement, whether such inability arises from the decision of the City's Development Permit Board, City Council, a court of competent jurisdiction or otherwise (other than where the decision of the City Party is patently malicious or capricious);
- (b) the City conducting all or any portion of the rehabilitation of the Heritage Buildings 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) this agreement, except to the extent the same arises directly and solely from a default of the City or a City Party hereunder;
- (e) any release of this agreement or the loss of any of the rights granted hereunder;
- (f) the non-compliance, if any, of the Lands, the Heritage Buildings or any part of either thereof with any City by-law; and
- (g) issuance of any development permit in respect of the Lands.

The releases and indemnities set out in this Article 6 will survive the expiration or earlier termination of this Agreement and will 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.

## **ARTICLE 7 GENERAL**

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

7.2 Time is of the essence in all respects in relation to this agreement and any instance of waiver of that requirement will not be a waiver for all or any other purpose hereunder.

7.3 The Owner, at his, her or its expense, after execution of this agreement, will do or cause to be done 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.

7.4 In an action to enforce this agreement the City will be entitled to court costs on an actual cost 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.

7.5 If the Land Title Office refuses to register this agreement, the Owner agrees to modify or re-execute this agreement to the City's satisfaction so as to enable registration.

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

7.7 Without limiting the generality of Section 7.6, if the Lands, or any portion thereof, are subdivided by way of a strata plan and the Heritage Buildings or any part thereof is located within the strata plan:

- (a) this agreement will charge each strata lot and will be noted on the common property sheet of the strata corporation;
- (b) the strata corporation or strata corporations so created will 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 will be in proportion to the unit entitlement of his, her or its strata lot as established by the strata plan and will be treated as a common expense and all strata lot owners will 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.

7.8 If ever any of the Heritage Buildings 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 Buildings and the rehabilitation thereof pursuant to this agreement has been completed to the City's satisfaction, 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 Buildings is located.

7.9 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* 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.

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

**END OF DOCUMENT**

## EXPLANATION

### **Heritage Designation By-law re 512 Glen Drive, 520 Glen Drive and 1106 East Pender Street**

After the public hearing on July 8, 2008, Council approved a recommendation to designate The James F. and Lillian A. Downer Houses as protected heritage property. Enactment of the attached by-law will achieve the designation.

Director of Legal Services  
September 16, 2008

512 Glen Drive  
520 Glen Drive  
1106 East Pender Street  
The James F. and Lillian A. Downer Houses



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

**A By-law to designate certain real property  
as protected heritage property**

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

1. Council considers that the real property described as:

Structure and exterior  
envelope of the  
improvements and  
exterior building  
materials

512 Glen Drive,  
520 Glen Drive, and  
1106 East Pender Street

Parcel Identifier:  
015-365-140  
Lot 1  
Parcel Identifier:  
015-365-166  
Lot 2  
Both of:  
Block 15 of Block A  
District Lot 182  
Plan 355

has heritage value or heritage character, and that its designation as protected heritage property is necessary or desirable for its conservation.

2. Council designates the real property described in section 1 of this By-law as protected heritage property under Section 593 of the *Vancouver Charter*.

3. 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 Zoning and Development By-law  
re 1342 Southwest Marine Drive**

After the public hearing on April 15, 2008, Council resolved to amend the Zoning and Development By-law to move this property from M-1 to C-2. The Director of Planning has advised that all prior-to conditions have been met, and enactment of the attached by-law will implement Council's resolution.

Director of Legal Services  
September 16, 2008



1342 Southwest Marine Drive



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:

**Zoning District Plan amendment**

1. This By-law amends the Zoning District Plan attached as Schedule D to By-law No. 3575, and amends or substitutes the boundaries and districts shown on it, according to the amendments, substitutions, explanatory legends, notations, and references shown on the plan marginally numbered Z-599(a) attached as Schedule A to this By-law, and incorporates Schedule A into Schedule D to By-law No. 3575.

**Force and effect**

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

**Schedule A**



The property outlined in black ( **█** ) is rezoned:  
 From **M-1** to **C-2**

**Z-599 (a)**

RZ - 1342 S.W. Marine Drive

map: 1 of 1

scale: NTS



**City of Vancouver**

date: Feb. 2008

**EXPLANATION****A By-law to correct minor errors in the  
by-law to modify fines for breaches of certain by-laws  
and related provisions and housekeeping changes**

On April 15, 2008, Council enacted By-law No. 9633 to amend various by-laws listed therein regarding fines and other housekeeping matters. This by-law, for which there is no report, corrects two very minor errors in By-law No. 9633, the first being the deletion of two irrelevant section numbers, and the second being a change from a reference to section 7(1) to a reference to section 8(1).

Director of Legal Services  
September 16, 2008

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



**A By-law to amend By-law No. 9633  
regarding housekeeping amendments to fine provisions**

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

1. In Table 1 of By-law No. 9633, Council strikes out from:
  - (a) the third column under the heading of "Street and Traffic By-law", which appears in the first column, ", 103(5)," and ", 103(8)"; and
  - (b) the second column under the heading of "Untidy Premises", which appears in the first column, "7(1)", and substitutes "8(1)".
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