

EXPLANATION**Heritage Designation By-law
re 2622 West 7th Avenue**

After the public hearing on October 17, 2006, Council approved a recommendation to designate a building at 2622 West 7th Avenue as protected heritage property. Enactment of the attached by-law will achieve the designation.

Director of Legal Services
January 20, 2009

2622 West 7th Avenue

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 ("Ainsworth
House")

2622 West 7th Avenue,
Vancouver, BC

PID: 015-122-433
Lot B
(Reference Plan 356) of
Lots 2 and 3
Block 18
District Lot 192
Plan 774

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 _____, 2009

Mayor

City Clerk

EXPLANATION**Authorization to enter into a
Heritage Revitalization Agreement
with the owner of 3409 Arbutus Street**

At a public hearing on October 28, 2008, Council resolved to enter into a by-law to authorize an agreement with the owner of the property at 3409 Arbutus 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
January 20, 2009

3409 Arbutus 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 3409 Arbutus Street, and the following legal description:

Parcel Identifier: 011-259-868
Lot 9, Block 530, District Lot 526, Plan 4998

contains a heritage building.

Council is of the opinion that the building has sufficient heritage value to justify its conservation, and Council and the owner of the property have agreed to facilitate such conservation by agreeing to the terms and conditions set out in the attached heritage revitalization agreement.

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

1. Council authorizes the City to enter into a heritage revitalization agreement with the owner in substantially the form and substance of the heritage revitalization agreement attached to this By-law, and also authorizes the Director of Legal Services to execute the agreement on behalf of the City and to deliver it to the owner on such terms and conditions as the Director of Legal Services deems fit.

LAND TITLE ACT
FORM C

(Section 233)

Province of British Columbia

GENERAL INSTRUMENT - PART 1

(This area for Land Title Office
Use)

Page 1 of 15 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)

011-259-868

Lot 9 Block 530 District Lot 526 Plan 4998

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):*

DOGWOOD PROPERTIES INC. (Inc. No.BC0720965)

BANK OF MONTREAL (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 | |
| <hr/> (Solicitor) (as to both signatures) | 08 | | | DOGWOOD PROPERTIES INC. by its authorized signatories: <hr/> Print Name: <hr/> Print Name: |
| <hr/> Bruce T. Quayle Lawyer 453 West 12 th Avenue Vancouver, BC, V5Y 1V4 Tel: 604-873-7714 | 08 | | | CITY OF VANCOUVER 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 D
EXECUTIONS CONTINUED

| Officer Signature(s) | Execution Date | | | Party(ies) Signature(s) |
|---|----------------|---|---|---|
| | Y | M | D | |
| <hr/> (Solicitor) (as to both signatures) | 08 | | | BANK OF MONTREAL by its authorized signatory(ies) <hr/> Print Name: <hr/> Print Name: |

OFFICER CERTIFICATION:
 Your signature constitutes a representation that your 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.

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 7 - 10, Article 2 | Transferee |
| Priority Agreement granting the above Section 219 Covenant priority over Mortgage CA708151 and Assignment of Rents CA7081 | Page 15 | Transferee |
| Statutory Right of Way | Page 12, Article 4 | Transferee |
| Priority Agreement granting the above Statutory Right of Way priority over Mortgage CA708151 and Assignment of Rents CA7081 | Page 15 | Transferee |
| Equitable Charge | Page 12, Article 5 | Transferee |
| Priority Agreement granting the above Equitable Charge priority over Mortgage CA708151 and Assignment of Rents CA7081 | Page 15 | Transferee |

TERMS OF INSTRUMENT - PART 2

Heritage Revitalization Agreement 3409 Arbutus Street

WHEREAS:

A. The Owner (as hereinafter defined) is the registered owner of the lands and premises located at 3409 Arbutus Street in the City of Vancouver, with the legal description:

PID: 011-259-868
Lot 9 Block 530 District Lot 526 Plan 4998

(the "Lands");

B. There is a house situated on the Lands, called "The Curry Residence", that is considered to be of heritage value and is registered on the City's Heritage Register as a Category "B" heritage property (the "Heritage Building").

C. Pursuant to its development permit applications to the City numbered DE412193 and DE411785 (the "DP Applications"), the Owner proposes to redevelop the Lands by:

- 1) subdividing them into two parcels;
- 2) keeping and rehabilitating the Heritage Building on one of the two new parcels; and
- 3) constructing a new single family dwelling on the other of the two new parcels.

D. Pursuant to Section 592 of the *Vancouver Charter* S.B.C. 1953, c.55 (the "*Charter*"), the City may enter into a heritage revitalization agreement with an owner of heritage property, and a heritage revitalization agreement may include provisions regarding the commencement and completion of actions required by the agreement, may vary or supplement, among other things, provisions of a subdivision by-law and a zoning by-law 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) 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) "*Charter*" means the *Vancouver Charter*, SBC 1953 c. 55;

- (b) “**City**” means the City of Vancouver as a municipal corporation continued pursuant to *Charter*;
- (c) “**City of Vancouver**” means the City’s geographic location and area;
- (d) “**conserve**” “**conservation**” mean 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, actions or processes aimed at preservation, maintenance, rehabilitation, restoration or any combination thereof;
- (e) “**Conservation Plan**” a written plan and guidelines prepared by or under the supervision of a Heritage Consultant for the rehabilitation and conservation of the Heritage Building, including all modifications thereto, that in all respects the City has explicitly approved in writing;
- (f) “**Development Permit**” means the City development permit(s) to be issued pursuant to the DP Applications;
- (g) “**DP Applications**” has the meaning given in Recital C above;
- (h) “**Effective Date**” means the date that this agreement is duly executed by the City;
- (i) “**Floor Space**” means the size of a real property development or a portion of a real property development measured in floor space area, calculated in accordance with the Zoning and Development By-laws;
- (j) “**Heritage Building**” means the Heritage Building as described and defined in Recital B above and includes, without limitation, all permitted replacements therefor and additions thereto and therein;
- (k) “**Heritage Consultant**” means an independent, heritage building conservation Heritage 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, engaged by the owner to plan and supervise, the rehabilitation and conservation of the Heritage Building;
- (l) “**Heritage Lands**” means that portion of the Lands that, after the proposed subdivision as described above, will contain the Heritage Building and which will have the civic address 3409 Arbutus Street;
- (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**” means the lands described in Recital A above and includes, without limitation, any and all parcels into which they are consolidated and/or in any way subdivided;
- (o) “**Non-Heritage Lands**” means that portion of the Lands that, after the proposed subdivision as described above, will contain the new house to be constructed on the Lands pursuant to the Development Permit and which will have the civic address 2108 West 18th Avenue;
- (p) “**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;
- (q) “**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 OF HERITAGE BUILDING

2.1 Pursuant to Section 219 of the *Land Title Act* RSBC 1996 c. 250 and Section 592 of the *Charter*, 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 and the Conservation Plan;
- (b) the Owner, at its expense, will ensure that in all respects a Heritage Consultant supervises 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) the Owner, at its expense, and 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;
- (e) the Owner will not and will not suffer or permit any other person to in any way use or occupy the Non-Heritage Lands or any part thereof at anytime after the Effective Date until the City has issued a new occupancy permit(s) therefor, 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 Non-Heritage Lands or any of them, until the rehabilitation of the Heritage Building 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;
- (f) 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;
- (g) at all times after completion of the rehabilitation of the Heritage Building as required by this agreement, the Owner, at its expense, in accordance with the Conservation Plan, will conserve the Heritage Building as rehabilitated and, in any event, in good condition in all respects as would a reasonable and prudent owner;
- (h) 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;
- (i) 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;
- (j) if the Heritage Building is ever damaged in any way, the Owner, at its expense, will repair and restore it 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 in the location of the Heritage Building, a building of similar form, appearance, massing, quality of materials, detailing and

height of the damaged Heritage Building after rehabilitation thereof 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;

- (k) 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; and
- (l) if the Heritage Building is ever damaged in any 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.

2.2 Notwithstanding the occupancy restrictions set out above, the Owner will be entitled to obtain an occupancy permit for the Non-Heritage Lands prior to the time that the rehabilitation of the Heritage Building is complete as required hereby, if:

- (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 building permit for the rehabilitation of the Heritage Building as required hereby;
- (c) all legal requirements for occupancy permits for the Non-Heritage Lands have been fulfilled;
- (d) 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 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); and
- (e) the Owner, at the time of issuance of an occupancy permit for the Non-Heritage Lands, is not 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 or any part of them.

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 Building 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 Building pursuant to this agreement; and/or
- (e) the Owner is in breach of any of its obligations under this agreement.

2.4 If the Owner fails to carry out the rehabilitation of the Heritage Building as required hereby, subject to the provisions of this agreement, the City may do so on the Owner's behalf, in which case the Owner will be obligated to pay the City the cost to it of carrying out those obligations, plus an amount, for overhead, equal to 20% of that amount and interest on those amounts at the Bank of Montreal's prime lending rate plus 3%.

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 two parcels therefrom covering areas of less than 5,000 sq. ft. of parcel area each, as follows:

Heritage Lands

| <u>By-law Minimum</u> | <u>Allowed with Variance</u> |
|--------------------------|---|
| 5,000 sq ft. parcel area | Approximately 3,366 sq. ft. parcel area |

Non-Heritage Lands

| <u>By-law Minimum</u> | <u>Allowed with variance</u> |
|------------------------------|--|
| 5,000 sq. ft. parcel area | Approximately 2,794 sq. ft. of parcel area |
| 50 feet parcel width | 49 feet parcel width |

3.2 Pursuant to Section 592 of the *Charter*, the RS-1 District Schedule to and Section 10 of the City's *Zoning and Development By-Law No. 3575* are hereby varied in respect of the Heritage Lands and the Non-Heritage Lands as follows:

Heritage Lands

| <u>Item</u> | <u>Applicable bylaw provision</u> | <u>With variances</u> |
|------------------------------------|---|------------------------------|
| Site Area | Section 4.1 of the RS-1 district schedule | Approximately 3,366 sq. ft. |
| Rear Yard | Section 4.6 of the RS-1 district schedule | 8.0 feet |
| Overall Floor Space square footage | Section 4.7 of the RS-1 district schedule | 2,864 sq. ft. Floor Space |
| Site Coverage/ Impermeability | Section 4.8 of the RS-1 district schedule | exemption |
| Building depth | Section 4.16 of the RS-1 district schedule | 46.5 feet |
| External Design | Section 4.17 of the RS-1 district schedule | exemption |
| Projections into Yards | Section 10 of the Zoning and Development By-law | exemption |

Non-Heritage Lands

| <u>Item</u> | <u>Applicable bylaw provision</u> | <u>With variances</u> |
|--|---|------------------------------|
| Site Area | Section 4.1 of the RS-1 district schedule | Approximately 2,794 sq. ft. |
| Front yard | Section 4.4 of the RS-1 district schedule | Approximately 10 feet |
| Rear Yard | Section 4.6 of the RS-1 district schedule | 2 feet (to attached garage) |
| West Side Yard | Section 4.5 of the RS-1 district schedule | 2 feet (to attached garage) |
| Primary and Secondary Envelopes | Section 4.3.1 (a) and (b) of the RS-1 district schedule | exemption |
| Overall Floor Space square footage | Section 4.7 of the RS-1 district schedule | 2,487 sq. ft. |
| Above Grade Floor Space square footage | Section 4.7.1 (b) of the RS-1 district schedule | 2,487 sq. ft. |
| Cellars | Section 4.7.2 (a) of the RS-1 district schedule | exemption |
| Site Coverage/ Impermeability | Section 4.8 of the RS-1 district schedule | exemption |

| | | |
|-----------------------|--|-----------|
| Building Depth | Section 4.16 of the RS-1 district schedule | 45.2 feet |
| External Design | Section 4.17 of the RS-1 district schedule | exemption |
| Projections into Yard | Section 10.7.1 of the Zoning and Development Bylaw | exemption |

3.3 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 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 its obligations hereunder to rehabilitate and conserve the Heritage Building, to carry out any rehabilitation or conservation work on the Heritage Building as the City, in its discretion, considers to be necessary in order to rehabilitate and/or conserve it in accordance with this agreement.

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 Building.

4.3 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 this agreement:

- (a) there will be no express or implied warranties as to the quality of such rehabilitation work or any other work contemplated hereby 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 hereby, plus twenty percent (20%) of such costs as fair compensation for the City's administrative costs and interest at the Bank of Montreal's prime lending rate plus 3%.

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. 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 the City and its officials, councillors, employees, contractors, agents and licensees (each, a "City Party" for the purposes of this Section 6.1) 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 City conducting all or any portion of the rehabilitation and/or conservation of the Heritage Building or any other work contemplated by this agreement;
- (b) 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;
- (c) this agreement, except to the extent the same arises directly and solely from a default of the City or a City Party hereunder;
- (d) any release of this agreement or the loss of any of the rights granted hereunder;
- (e) the non-compliance, if any, of the Lands, the Heritage Building or any part thereof with any City by-law; and
- (f) the issuance of any development permit in respect of the Lands.

6.2 The release and indemnity 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 release and indemnity in this Article 6 will be both personal covenants of the Owner and an integral part of the Section 219 covenant granted in this agreement.

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 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.

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 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.

7.8 Once the rehabilitation of the Heritage Building has been completed as required hereby, to the City's satisfaction, the City, at the Owner's expense and request, within a reasonable time after the Owner makes the request, will discharge this agreement from title to the Non-Heritage Lands.

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**

BANK OF MONTREAL (the "Chargeholder")
holder of Mortgage No. CA708151 and Assignment of Rents No. CA708152
(together, the "Charge")

charging Lot 9 Block 530 District Lot 526 Plan 4998
(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 3409 Arbutus Street**

At a public hearing on October 28, 2008, Council approved a recommendation to designate a building at 3409 Arbutus Street as protected heritage property. Enactment of the attached by-law will achieve the designation.

Director of Legal Services
January 20, 2009

3409 Arbutus Street
The Curry Residence

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

3409 Arbutus Street

Parcel Identifier: 011-259-868
Lot 9, Block 530, District Lot 526,
Plan 4998

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 _____, 2009

Mayor

City Clerk

EXPLANATION**Authorization to enter into a
Heritage Revitalization Agreement
with the owner of 212 East 38th Avenue**

At a public hearing on October 28, 2008, Council resolved to enter into a by-law to authorize an agreement with the owner of the property at 212 East 38th Avenue 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
January 20, 2009

212 East 38th Avenue

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 212 East 38th Avenue, and the following legal description:

Parcel Identifier: 014-369-214

Lot 7 Except Part in Plan 4447, Block 2, District Lot 639, Plan 1725

contain a heritage building.

Council is of the opinion that the building has sufficient heritage value to justify its conservation, and Council and the owner of the property have agreed to facilitate such conservation by agreeing to the terms and conditions set out in the attached heritage revitalization agreement.

LAND TITLE ACT

FORM C

(Section 233)

Province of British Columbia

GENERAL INSTRUMENT - PART 1

(This area for Land Title Office Use)

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) |
|-------------|---|
| 014-369-214 | Lot 7 Except Part in Plan 4447 Block 2 District Lot 639 Plan 1725 |

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):*

PANGLI CONSTRUCTION LTD. (Inc. No.0691818)
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 | |
| <hr/> (Solicitor) (as to both signatures) | 08 | | | PANGLI CONSTRUCTION LTD. , by its authorized signatories: <hr/> Print Name: <hr/> Print Name: CITY OF VANCOUVER by its authorized signatory: <hr/> Frances J. Connell/Graham P. Johnsen |
| <hr/> Stephen F. Hayward Solicitor 453 West 12 th Avenue Vancouver, BC, V5Y 1V4 Tel: 604-873-7714 | 08 | | | |

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 7 - 10, Article 2 Page 15 | Transferee |
| Priority Agreement granting the above Section 219 Covenant priority over Mortgage BB555843 and Assignment of Rents BB555844 | Page 11 - 12, Article 4 Page 15 | Transferee |
| Statutory Right of Way | Page 12, Article 5 Page 15 | Transferee |
| Priority Agreement granting the above Statutory Right of Way priority over Mortgage BB555843 and Assignment of Rents BB555844 | Page 12, Article 5 Page 15 | Transferee |
| Equitable Charge | Page 12, Article 5 Page 15 | Transferee |
| Priority Agreement granting the above Equitable Charge priority over Mortgage BB555843 and Assignment of Rents BB555844 | | Transferee |

TERMS OF INSTRUMENT - PART 2

Heritage Revitalization Agreement

WHEREAS:

A. The Transferor, Gulf and Fraser Fishermen's Credit Union (the "Owner") is the registered owner of the lands and premises located at 212 East 38th Avenue in the City of Vancouver, which has the legal description set out in item 2 of the Form C - General Instrument Part 1 portion of this document (the "Lands").

B. There is a house situated on the Lands, called "The Lawson/Logie Residence", that is considered to be of heritage value and is registered on the City's Heritage Register as a Category "C" heritage property (the "Heritage Building").

C. Pursuant to its development permit applications to the City numbered DE412307 and DE412306 (the "DP Applications"), the Owner proposes to redevelop the Lands by:

- 1) subdividing them into two parcels;
- 2) keeping and rehabilitating the Heritage Building on one of the two new parcels; and
- 3) constructing two new two family dwellings ("duplexes") on the other of the two new parcels.

D. Pursuant to Section 592 of the *Vancouver Charter* S.B.C. 1953, c.55 (the "*Charter*"), the City may enter into a heritage revitalization agreement with an owner of heritage property, and a heritage revitalization agreement may include provisions regarding the commencement and completion of actions required by the agreement, may 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) 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) "**Charter**" means the *Vancouver Charter*, SBC 1953 c. 55;
- (b) "**City**" means the City of Vancouver as a municipal corporation continued pursuant to *Charter*;

- (c) **“City of Vancouver”** means the City’s geographic location and area;
- (d) **“conserve” “conservation”** mean 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, actions or processes aimed at preservation, maintenance, rehabilitation, restoration or any combination thereof;
- (e) **“Conservation Plan”** a written plan and guidelines prepared by or under the supervision of a Heritage Consultant for the rehabilitation and conservation of the Heritage Building, including all modifications thereto, that in all respects the City has explicitly approved in writing;
- (f) **“Development Permit”** means a City development permit(s) to be issued pursuant to the DP Applications;
- (g) **“DP Applications”** has the meaning given in Recital C above;
- (h) **“Effective Date”** means the date that this agreement is duly executed by the City;
- (i) **“Floor Space”** means the size of a real property development or a portion of a real property development measured in floor space area, calculated in accordance with the Zoning and Development By-laws;
- (j) **“Heritage Building”** means the Heritage Building as described and defined in Recital B above and includes, without limitation, all permitted replacements therefor and additions thereto and therein;
- (k) **“Heritage Consultant”** means an independent, heritage building conservation Heritage 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, engaged by the owner to plan and supervise, the rehabilitation and conservation of the Heritage Building;
- (l) **“Heritage Lands”** means that portion of the Lands that, after the proposed subdivision as described above, will contain the Heritage Building and which will have the civic address 212 East 38th Avenue;
- (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”** means the lands described in Recital A above and includes, without limitation, any and all parcels into which they are consolidated and/or in any way subdivided;

- (o) “**Non-Heritage Lands**” means that portion of the Lands that, after the proposed subdivision as described above, will contain the new house to be constructed on the Lands pursuant to the Development Permit and which will have the civic address 5400 Main Street;
- (p) “**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;
- (q) “**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 OF HERITAGE BUILDING

2.1 Pursuant to Section 219 of the *Land Title Act* RSBC 1996 c. 250 and Section 592 of the *Charter*, 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 and the Conservation Plan;
- (b) the Owner, at its expense, will ensure that in all respects a Heritage Consultant supervises 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) the Owner, at its expense, and 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;
- (e) the Owner will not and will not suffer or permit any other person to in any way use or occupy any of the Lands or any part thereof at anytime after the Effective Date until the City has issued a new occupancy permit(s) therefor, 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 Lands or any of them, until the rehabilitation of the Heritage Building 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;
- (f) 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.
- (g) at all times after completion of the rehabilitation of the Heritage Building as required by this agreement, the Owner, at its expense, in accordance with the Conservation Plan, will conserve the Heritage Building as rehabilitated and, in any event, in good condition in all respects as would a reasonable and prudent owner;
- (h) 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;
- (i) 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;
- (j) if the Heritage Building is ever damaged in any way, the Owner, at its expense, will repair and restore it 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 in the location of the Heritage Building, a building of similar form, appearance, massing, quality of materials, detailing and height of the damaged Heritage Building after rehabilitation thereof 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;

- (k) 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; and
- (l) if the Heritage Building is ever damaged in any 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.

2.2 Notwithstanding the occupancy restrictions set out above, the Owner will be entitled to obtain an occupancy permit for the Non-Heritage Lands prior to the time that the rehabilitation of the Heritage Building is complete as required hereby, if:

- (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 building permit for the rehabilitation of the Heritage Building as required hereby;
- (c) all legal requirements for occupancy permits for the Non-Heritage Lands have been fulfilled;
- (d) 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 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); and
- (e) the Owner, at the time of issuance of an occupancy permit for the Non-Heritage Lands, is not 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 or any part of them.

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 Building 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 Building pursuant to this agreement; and/or
- (e) the Owner is in breach of any of its obligations under this agreement.

2.4 If the Owner fails to carry out the rehabilitation of the Heritage Building as required hereby, subject to the provisions of this agreement, the City may do so on the Owner's behalf, in which case the Owner will be obligated to pay the City the cost to it of carrying out those obligations, plus an amount, for overhead, equal to 20% of that amount and interest on those amounts at the Bank of Montreal's prime lending rate plus 3%.

ARTICLE 3 BY-LAW VARIATIONS

3.1 Pursuant to Section 592 of the *Charter*, Section 9.1 and 9.3 of the City's *Subdivision Bylaw* are hereby varied in respect of the Lands so as permit the creation of two parcels therefrom covering areas of less than 3,000 sq. ft., as follows:

Heritage Lands

| <u>Item</u> | <u>By-law Minimum</u> | <u>Variance</u> |
|--------------|-----------------------|--|
| Parcel Width | 40 feet | Minimum of approximately 31 feet |
| Parcel Area | 3,000 sq. ft. | Minimum of approximately 1,087 sq. ft. |

3.2 Pursuant to Section 592 of the *Charter*, the RS-2 District Schedule to and Section 10 of the City's *Zoning and Development By-Law No. 3575* are hereby varied in respect of the Heritage Lands and the Non-Heritage Lands as follows:

Heritage Lands

| <u>Item</u> | <u>Bylaw Provision</u> | <u>Variance</u> |
|------------------------|---|-----------------|
| Front Yard | Section 4.4 of the RT-2 District Schedule | exemption |
| Side Yards | Section 4.5 of the RT-2 District Schedule | exemption |
| Rear Yard | Section 4.6 of the RT-2 District Schedule | exemption |
| Overall square footage | Section 4.7 of the RT-2 District Schedule | exemption |
| Site Coverage | Section 4.8 of the RT-2 District Schedule | exemption |
| Projections into yards | Section 10.7.1 of the Zoning and Development By-law | exemption |

Non-Heritage Lands

| <u>Item</u> | <u>Bylaw Provisions</u> | <u>Variance</u> |
|---------------------------------------|---|---|
| Number of storeys with a basement | Section 4.3.1 of the RT-2 District Schedule | Permit two storeys plus a basement |
| Front Yard | Section 4.4 of the RT-2 District Schedule | 12 feet (to front of porches) |
| Side Yard | Section 4.5 of the RT-2 District Schedule | 4 feet |
| Rear Yard | Section 4.6 of the RT-2 District Schedule | exemption |
| Overall square footage | Section 4.7 of the RT-2 District Schedule | 4,626 sq. ft. (including covered porches) |
| Projections into yards | Section 10.7.1 of the Zoning and Development By-law | exemption |
| Number of Principal Buildings on Site | Section 10.1 of the Zoning and Development By-law | 2 |

3.3 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 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 its obligations hereunder to rehabilitate and conserve the Heritage Building, to carry out any rehabilitation or conservation work on the Heritage Building as the City, in its discretion, considers to be necessary in order to rehabilitate and/or conserve it in accordance with this agreement.

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 Building.

4.3 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 this agreement:

- (a) there will be no express or implied warranties as to the quality of such rehabilitation work or any other work contemplated hereby 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 hereby, plus twenty percent (20%) of such costs as fair compensation for the City's administrative costs and interest at the Bank of Montreal's prime lending rate plus 3%.

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. 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 the City and its officials, councillors, employees, contractors, agents and licensees (each, a "City Party" for the purposes of this Section 6.1) 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 City conducting all or any portion of the rehabilitation and/or conservation of the Heritage Building or any other work contemplated by this agreement;
- (b) 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;
- (c) this agreement, except to the extent the same arises directly and solely from a default of the City or a City Party hereunder;
- (d) any release of this agreement or the loss of any of the rights granted hereunder;

- (e) the non-compliance, if any, of the Lands, the Heritage Building or any part thereof with any City by-law; and
- (f) the issuance of any development permit in respect of the Lands.

6.2 The release and indemnity 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 release and indemnity in this Article 6 will be both personal covenants of the Owner and an integral part of the Section 219 covenant granted in this agreement.

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 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.

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 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.

7.8 Once the rehabilitation of the Heritage Building has been completed as required hereby, to the City's satisfaction, the City, at the Owner's expense and request, within a reasonable time

after the Owner makes the request, will discharge this agreement from title to the Non-Heritage Lands.

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**

GULF AND FRASER FISHERMEN'S CREDIT UNION (the "Chargeholder")
holder of Mortgage No. BB555843 and Assignment of Rents No. BB555844
(together, the "Charge")

charging Lot 7 Except Part in Plan 4447 Block 2 District Lot 639 Plan 1725
(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 212 East 38th Avenue**

At a public hearing on October 28, 2008, Council approved a recommendation to designate a building at 212 East 38th Avenue as protected heritage property. Enactment of the attached by-law will achieve the designation.

Director of Legal Services
January 20, 2009

212 East 38th Avenue
The Lawson/Logie Residence

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

212 East 38th Avenue

Parcel Identifier:

014-369-214

Lot 7

Except Part in Plan 4447,
Block 2, District Lot 639,
Plan 1725

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 _____, 2009

Mayor

City Clerk

EXPLANATION**Authorization to enter into a housing agreement
re 1803 Frances Street**

On December 16, 2008, Council approved a recommendation to approve a housing agreement for 1803 Frances Street re rental accommodation. Enactment of the attached by-law will implement that resolution, and authorize Council to enter into a housing agreement with the land owner.

Director of Legal Services
January 20, 2009

1803 Frances Street

BY-LAW NO. _____



**A By-law to enact a Housing Agreement
for 1803 Frances Street**

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

1. Council authorizes the City to enter into a housing agreement with the owner of certain lands described as Parcel Identifier: 027-458-865, Lot 1 (being a consolidation of Lots A and B, see BB650422) Lot 6, Block E, District Lot 183, Plan 1641, in substantially the form and substance of the housing 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 _____, 2009

Mayor

City Clerk

HOUSING AGREEMENT
1803 Frances Street

THIS AGREEMENT dated for reference the ____ day of _____, 2009

BETWEEN:

CAROL'S ENTERPRISES LTD.
(Incorporation No. 812186)
2557 East 46th Avenue
Vancouver, British Columbia
V5S 1A1

(the "Owner")

OF THE FIRST PART

AND:

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

(the "City")

OF THE SECOND PART

WHEREAS:

- A. The Owner is the registered owner of all and singular that certain parcel or tract of land and premises situate in the City of Vancouver, in the Province of British Columbia, legally described as:

City of Vancouver
Parcel Identifier: 027-458-865
Lot 1 (Being a Consolidation of Lots A and B, See BB650422) Lot 6
Block E District Lot 183 Plan 1641,

(the "Lands");

- B. Pursuant to development application DE411420, the Owner proposes to develop the Lands with one building containing six (6) dwelling units. The Zoning and

Development By-law requires one of the dwelling units to provide rental accommodation.

- C. The Owner further proposes to subdivide the building by strata plan thereby creating six (6) strata lots as shown on Schedule A. The strata lot identified on Schedule "A" as the "Rental Strata Lot" is herein called the "Rental Strata Lot".
- D. The strata corporation created by registration of the strata plan is herein called the "Strata Corporation".

NOW THEREFORE THIS AGREEMENT WITNESSES that as a condition of development application DE411420 and as required by the Zoning and Development By-law and in consideration of the sum of Ten (\$10.00) now paid by the City to the Owner and for other good and valuable consideration (the receipt and sufficiency of which the Owner hereby acknowledges) the Owner and the City each covenant with the other pursuant to Section 565.2 of the *Vancouver Charter* as follows:

1. The Rental Strata Lot shall be occupied only by tenants pursuant to an arm's length tenancy agreement.
2. Upon request, the owners of the Rental Strata Lot shall provide the City with a true copy of the current tenancy agreement and the complete identities of all tenants and occupants of the Rental Strata Lot.
3. Upon request, all occupants of a Rental Strata Lot shall satisfactorily identify themselves to the City.
4. Any Strata Corporation by-law which prohibits, restricts or limits the rental of strata lots shall not apply to the Rental Strata Lot.
5. This agreement may be enforced by mandatory and prohibitory orders of the court.
6. In any action to enforce this agreement the City may seek punitive damages.
7. In any action to enforce this agreement the City shall be entitled to court costs on a solicitor and own client basis.
8. Whenever the singular or masculine is used herein, the same shall be construed as meaning the plural, feminine or body corporate or politic and vice versa where the context or the parties require.

9. This Agreement shall enure to the benefit of and be binding upon the Owner and its successors, trustees and assigns and all parties claiming through them and this Agreement shall enure to the benefit of and be binding upon the City and its successors and assigns and this Agreement shall charge and run with the Lands and all strata lots created therefrom and enure to the benefit of and be binding upon the owners from time to time of the Lands and all strata lots created therefrom and all parties claiming through such owners and their respective heirs, executors, administrators, trustees and successors.

IN WITNESS WHEREOF the Owner has caused its authorized signatories to sign and date this agreement as set out hereunder and the City has caused its authorized signatory to sign and date this agreement as set out hereunder.

Execution Date

Y M D

Officer:

Party:

CAROL'S ENTERPRISES LTD. by its authorized signatories:

_____ 09

Sign and Print Name:

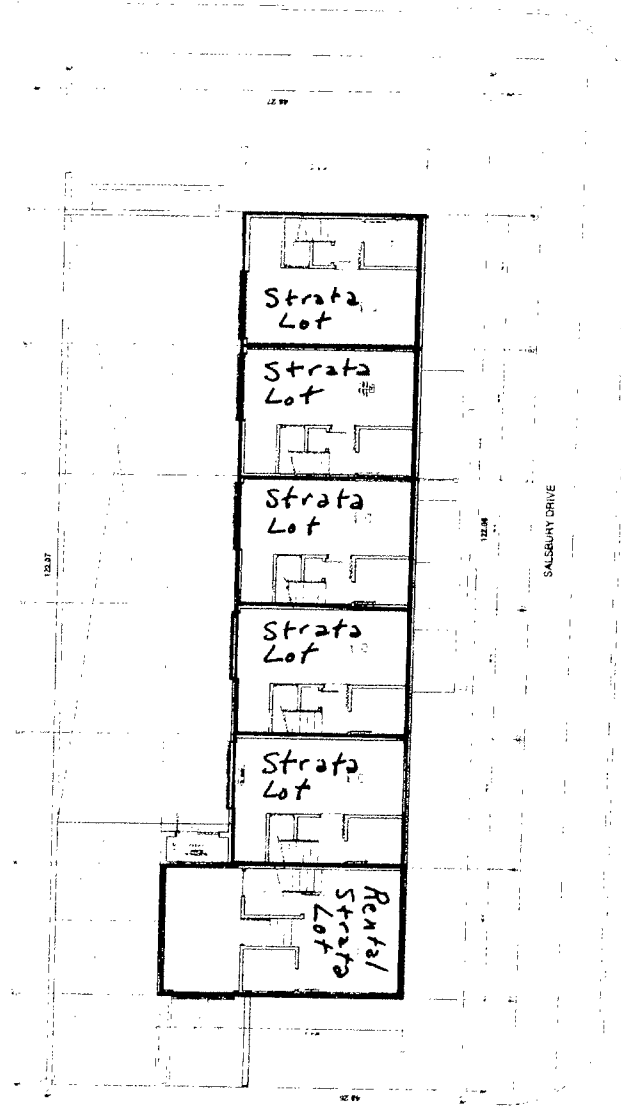
Sign and Print Name:

CITY OF VANCOUVER by its Authorized Signatory:

_____ 09
Joe Stubbs, Solicitor
City of Vancouver
453 West 12th Avenue
Vancouver, B.C., V5Y 1V4
604-873-7504

Approved by By-law No. _____

Schedule A



EXPLANATION**Water Works By-law
regarding changes to 2009 fee increases**

Enactment of the attached by-law will implement Council's resolution of January 20, 2009 respecting the correction of certain 2009 rate increases.

Director of Legal Services
January 20, 2009

BY-LAW NO. _____



**A By-law to amend Water Works By-law No. 4848
regarding changes to 2009 fee increases**

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

1. Council repeals Schedule B and Schedule D of the Water Works By-law, and substitutes the following respectively:

“SCHEDULE B: Annual Flat Rate Service Charges for Residential Properties

The following charges apply to single family dwellings and dwellings comprising not more than two separate dwelling units:

| | |
|------------------------------|----------|
| Single Dwelling Unit | \$379.00 |
| Single-Family with suite | 513.00 |
| For each strata title duplex | 256.00” |

“SCHEDULE D: Charges for Metered Water Service

| <i>Two Monthly Period</i> | <i>Four Monthly Period</i> | <i>Rate In Dollars per Unit (2,831.6 Litres)</i> |
|---------------------------|----------------------------|--|
| Per unit | Per unit | \$1.827” |

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

ENACTED by Council this _____ day of _____, 2009

Mayor

City Clerk

EXPLANATION**Sewer and Watercourse By-law
regarding changes to 2009 fee increases
and miscellaneous amendments**

Enactment of the attached by-law will implement Council's resolution of January 20, 2009 respecting the correction of sewer and watercourse rates and fees and supporting amendments.

Director of Legal Services
January 20, 2009

BY-LAW NO. _____



**A By-law to amend
Sewer and Watercourse By-law No. 8093
regarding changes to 2009 fee increases and miscellaneous amendments**

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 Sewer and Watercourse By-law.

2. Council repeals section 7.1, and substitutes:

“7.1 SEWER UTILITY RATES - GENERAL

Nothing in this Section 7.1 forms part of the legal text of this By-law and is for general information purposes only. For the purposes of this By-law, it has been estimated that on average, approximately 85% of the water supplied by the City to most properties is discharged into the public sewer system. Accordingly, the water-consumption based sewer rates set out in Schedule A to this By-law have been calculated on the basis that an estimated 15% of such water consumption does not enter the public sewer system.”

3. Council repeals section 7.3(2)(b)(i), and substitutes:

“All rates will be determined on the basis of water delivered to the property in any given billing period.”

4. Council repeals section 7.5, and substitutes:

“(1) Minimum Rate for Septic

For each property which is served exclusively by a plumbing system which is not connected directly or indirectly to a public sewer connection, the owner and occupier of such property will pay the rate for “Other Property” set out in Part IV of Schedule A of this By-law, on account of the City’s costs of providing a public sewer system, whether or not that property is currently using or served by such system.

(2) Billing and Collection for Septic

The rates payable pursuant to Sentence (1) will be pro-rated, adjusted, billed, paid, entered on the tax roll and be subject to late payment interest, penalties and other charges in the same manner as the rates payable pursuant to Section 7.2.”

5. Council repeals section 7.6, and substitutes:

“(1) Minimum Rate for Other Property

For each property which is not subject to any of the rates set out in Sections 7.2, 7.3, 7.4 or 7.5 of this By-law, the owner and occupier of such property will pay the rate for “Other Property” set out in Part IV of Schedule A of this By-law on account of the City’s costs of providing a public sewer system, whether or not that property is currently using or served by such system.

(2) Billing and Collection for Other Property

The rates payable pursuant to Sentence (1) will be pro-rated, adjusted, billed, paid, entered on the tax roll and be subject to late payment interest, penalties and other charges in the same manner as the rates payable pursuant to Section 7.2.”

6. From Schedule A, Part 5, Council repeals:

| | |
|-----------------|---------|
| “Minimum Charge | \$7.50” |
|-----------------|---------|

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

ENACTED by Council this _____ day of _____, 2009

Mayor

City Clerk